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ABSTRACT

The book presents the complete texts of federal statutes and parallel regulations for the following laws affecting children with special needs: Education of the Handicapped Act, Part A-Part H; three programs under the Elementary and Secondary Education Act--Chapter 1, Disadvantaged; Chapter 1, Even Start; and Chapter 1, Handicapped; the Developmental Disabilities Assistance and Bill of Rights Act; Head Start Act; Comprehensive Child Development Act; Section 504 of the Rehabilitation Act; and selected sections of the General Education Provisions Act. Regulations address such aspects as the following: definitions; intergovernmental reviews; uniform administrative requirements for grants and cooperative agreements; family educational rights and privacy; nondiscrimination on the basis of handicap; Chapter 1 programs in local educational agencies; assistance to states for education of handicapped children; preschool grants for handicapped children; early intervention programs for infants and toddlers with handicaps; removal of architectural barriers; regional resource and federal centers; services for deaf-blind children and youth; handicapped children's early education program; the program for severely handicapped children; training personnel for the education of the handicapped; clearinghouses for the handicapped; research in education of the handicapped; secondary education and transitional services; educational medical loan service; postsecondary education programs; Head Start; formula grant programs; and the University Affiliated Program. (DB)

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LAWS AFFECTING CHILDREN WITH SPECIAL NEEDS

Selected Federal Statutes and Regulations

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—From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

This volume is a compilation of Federal statutes and regulations relating to children with special needs. It has been derived from a thorough review of current Federal law. The laws published in this volume have been selected by LRP Publications on the basis of their relevance to these issues. While every effort has been made to provide the most comprehensive and useful volume of Federal laws available, all warranties as to the completeness or accuracy of the material contained in this volume are expressly excluded. Readers are urged to consult the U.S. Code and the Code of Federal Regulations for the official version of the Acts contained herein.

INTRODUCTION AND HOW TO USE

In the last several decades, there has been an increasing awareness among legislators of issues that affect the lives of children with special needs. Congress and the Executive Branch have reacted by enacting many new laws and promulgating new regulations aimed at meeting the needs of this population. This trend continues into the 1990s. With the scheduled reauthorizations of current legislation, enactment of new programs, and resulting regulatory activity, it is becoming more and more difficult for professionals and parents to keep track of the current statutory and regulatory authority for programs for children with special needs and their families.

Laws Affecting Children with Special Needs: Selected Federal Statutes and Regulations, provides the complete text of federal statutes and regulations for selected programs which impact on service delivery systems for children with special needs and their families. It has been designed in response to the need of policy-makers, administrators, practitioners and parents to have a current, updateable source for pertinent federal statutory and regulatory authority without having to pour through voluminous legislative services or the *Federal Register.* An explanation of which programs have been selected for inclusion in this service, and why, is included in the "Overview" section of this publication.

The first edition of this service, published in May 1990, contains laws and regulations current as of May 1, 1990. Updates or revisions, in the form of new or amended laws or regulations, will be issued several times each year as they are made available. The updates will include replacement pages for affected sections as well as a table listing the sections and the date of their change. In addition, each page will contain its publication date in the footer, for easy reference.

The service has been divided into three sections: Overview, Statutes and Regulations —

I. Overview — This section contains an explanation of the editorial philosophy employed in selecting programs for inclusion in this service. It also contains a brief description of each program as prepared by the editors.

II. Statutes — The various acts and portions of acts contained in this service have been organized in order of their United States Code (U.S.C.) citations. At the beginning of this section you will find a Table of Contents listing the name, citation, and beginning page number of each act. To facilitate future changes and additions to this section, we've divided the acts into separate "chapters," each with its own pagination sequence. The pagination is characterized by an abbreviation of the act followed by a sequential number. For example, the first page of the "General Education Provisions Act" would be GEPA-1, while the first page of the "Education of the Handicapped Act" would be EHA-1. In addition, each act or "chapter" begins with a Table of Contents listing the sections contained therein.

III. Regulations — The regulations contained in this service have been organized in order of their Code of Federal Regulations (C.F.R.) citations. This section begins with a Table of Contents listing the name and citation of each C.F.R. Part and its beginning page number. Similar to the Statute section, each part is treated as a separate chapter. The pagination for each Part is characterized by the appropriate C.F.R. title number, followed by a decimal and the Part number, followed by a sequential number. For example, the Even Start Program, which is codified at 34 C.F.R. Part 212, would begin on page 34.212-1, while the Head Start Program, which is codified at 45 C.F.R. Part 1304, would begin on page 45.1304-1.

OVERVIEW

There are many federal laws which impact on children with special needs and their families and all of these cannot practically be contained in a single service. This service does not intend to be an exhaustive collection of federal programs related to this population. Programs were selected because of their purpose and potential impact on services to children, with an emphasis on programs reflecting the importance of early intervention. With that in mind, programs under seven federal laws were selected for initial inclusion in this service. In several cases, the entire law was included because of its relevance to this population. The following are included:

General Education Provisions Act (selected sections)
Education of the Handicapped Act
Elementary and Secondary Education Act (selected sections)
Rehabilitation Act (selected sections)
Developmental Disabilities Assistance and Bill of Rights Act
Head Start Act
Comprehensive Child Development Act

Complete statutory language for programs selected is contained behind the tab "Statutes." Parallel federal regulations for each of the programs is included behind the tab "Regulations."

In some cases, in addition to the specific regulations promulgated for a program, other federal regulations may apply to the implementation of that program. The most notable example is the Education Department General Administrative Regulations (EDGAR), parts of which apply to most federal education programs. In the case of some other programs, regulations for EHA, Part B also will apply. For example, to implement the EHA, Part H - Handicapped Infant and Toddler Program, the following regulations apply:

— 34 CFR Part 303, Handicapped Infants and Toddlers
— selected Education Department General Administrative Regulations (EDGAR) regulations including 34 CFR Part 76, 34 CFR Part 77, 34 CFR Part 79, 34 CFR Part 80, 34 CFR Part 81, 34 CFR Part 85
— selected Assistance to States for Education of Handicapped Children (Part B) regulations including 34 CFR Part 300.560-576 and 34 CFR Part 300.581-586
— 34 CFR Part 99, Family Educational Rights and Privacy Act (FERPA)

Federal regulations generally list, within the text of the regulation, what other federal regulations are applicable. Since EHA is the primary federal program assuring services to children with special needs, any regulations which apply to either EHA-Part B, the State Grant Program or EHA-Part H, the Handicapped Infants and Toddlers Program, are included in this document.

Current statutory text for the following programs are included in this service. These are found behind the tab "Statutes" and will be updated through the revision service several times each year.

General Education Provisions Act (GEPA)
20 U.S.C. Sections 1221-1234h

This Act was enacted January 2, 1968 as Title IV of Public Law 90-247. It has been amended a number of times since then with the most recent being the amendments made through P.L. 100-297 in 1988. Sections of GEPA which relate specifically to the requirements for state and local participation in federal education programs are included. These include general provisions, state responsibility to furnish information, availability of federal funds, submission and review of applications, promulgation of regulations, monitoring, local agency application, family educational rights and privacy, records, and enforcement.

Education of the Handicapped Act (EHA)
20 U.S.C. Sections 1400-1485

Originally authorized by P.L. 91-230 on April 13, 1970, the Education of the Handicapped Act (EHA) has been amended seven times, with the last amendments in 1988. These most recent amendments, for the most part technical in nature, were enacted through P.L. 100-630.

As stated within the Act, its purpose is to assure that all children with handicaps have a free appropriate public education, to assure that the rights of children with handicaps and their parents or guardians are protected, to assist states and localities to provide for the education of all children with handicaps, and to assess and assure the effectiveness of efforts to educate children with handicaps.

EHA contains eight parts (Part A - Part H). Parts A and B are permanently authorized. Parts C through G are scheduled for reauthorization in 1990. Part H is scheduled for reauthorization in 1991. The EHA Parts are as follows:

Part A — General Provisions

This part contains, among other things, Congressional findings, purpose statements, definitions, authorization for the National Advisory Committee on Handicapped Children and Youth and the federal Office of Special Education Programs, and requirements for the promulgation of regulations under Part B of EHA.

Part B — Assistance For Education of All Handicapped Children

This part contains programmatic and administrative requirements governing state and local implementation of programs for children with handicaps from 3-21 years of age. Requirements for the location, identification, and evaluation of children from birth, suspected of being handicapped, are also included.

Section 1419 of Part B, the Preschool Grants Program, provides for incentives for states and local school districts to provide a free appropriate public education (FAPE) to children, three through five years, with handicaps. In order to participate in this program from FY '91 and thereafter a state must assure the availability of FAPE to all eligible preschoolers.

Section 1406 contains provisions for grants for the removal of architectural barriers.

Part C — Centers and Services to Meet Special Needs of Handicapped Individuals

This part of EHA contains the authority for six discretionary programs under EHA. These programs include Regional Resource Centers, Services for Deaf-Blind Children and Youth, Early Education for Handicapped Children (HCEEP), Programs for Severely Handicapped, Postsecondary Education, and Secondary Education and Transitional Services for Handicapped Youth.

Part D — Training Personnel for the Education of Handicapped Individuals

This part of EHA contains authority for a variety of grants to assist in training personnel, for providing training and information to parents of children with handicaps, and for a number of national clearinghouses and other dissemination projects.

Part E — Research in Education of Handicapped Individuals

This part of EHA authorizes grants for research and related activities to assist special education personnel, related service personnel, early intervention personnel, and others, including parents in improving special education and related services and early intervention services and to conduct research, surveys, or demonstrations relating to the provision of services to infants, toddlers, children, and youth with handicaps. It also includes the authority for grants for research and related purposes relating to physical education or recreation for children with handicaps.

Part F — Instructional Media for Handicapped Individuals

The purpose of this part is to promote the general welfare of individuals who are deaf and the general welfare of persons with handicaps. Activities authorized include research in the use of educational media, producing and distributing educational media, and training in the use of instructional media.

Part G — Technology, Educational Media, and Materials for Handicapped Individuals

The purpose of this program is to advance the use of new technology, media, and materials in the education of students with handicaps and the provision of early intervention to infants and toddlers with handicaps.

Part H — Handicapped Infants and Toddlers Program

Part H of EHA was authorized by P.L. 99-457, the Education of the Handicapped Amendments of 1986. It is a formula grant program designed to assist states in establishing a statewide, comprehensive system of early intervention services for infants and toddlers with handicaps and their families.

Elementary and Secondary Education Act (ESEA)
20 U.S.C. Sections 2701-2796

This Act was reauthorized April 28, 1988 as P.L. 100-297, the Augustus F. Hawkins-Robert Stafford Elementary and Secondary School Improvement Amendments of 1988. In 1981, P.L. 97-35, the Education Consolidation and Improvement Act, consolidated authority for most federal education programs and cited the resulting program as the Elementary and Secondary Education Act (ESEA). Most programs under ESEA are scheduled for reauthorization in 1994.

Three programs under Chapter 1, Financial Assistance to Meet Special Educational Needs of Children, which is under Subchapter 1, Basic Programs, of ESEA are included in the service. The purpose of Chapter 1, according to the statute is to "improve the educational opportunities of educationally deprived children by helping such children succeed in the regular program of the local educational agency, attain grade-level proficiency, and improve achievement in basic and more advanced skills. These purposes shall be accomplished through such means as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education." The three programs included are:

Part A — Basic Programs Operated by Local Educational Agencies

This part of ESEA authorizes grants to local education agencies for programs and projects which are designed to meet the special educational needs of educationally deprived children. State and local education agencies are encouraged to develop programs to assist eligible children to improve achievement in basic skills and more advanced skills. According to the Act, such programs "may include preschool through secondary programs; the acquisition of equipment and instructional materials; books and school library resources; employment of special instructional personnel; school counselors, and other pupil services personnel; employment and training of educational aides; payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas; the training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood educational professionals (including training in preparation for the implementation of programs and projects in a subsequent school year);" as well as construction, parent involvement, planning and evaluation and other expenditures as authorized. Year-round services and activities are encouraged.

Part B — Even Start Programs Operated by Local Educational Agencies

The purpose of this new program is to improve the educational opportunities of children and adults by integrating early childhood education and adult education for parents into a single program. The grants are funded through community cooperative projects that build on existing resources. A 3% setaside is reserved for Migrant Even Start Programs

Part D — Programs Operated by State Agencies, Programs for Handicapped Children

This program, generally referred to as P.L. 89-313, was originally authorized under P.L. 89-10 and provides funds to states for programs and projects which are designed to supplement the special needs of children with handicaps, aged 3-21 years or the early intervention needs of children with handicaps, birth through age two years. Children, aged three through 21 years counted under this program and therefore eligible to receive federal funds, may not also be counted under the EHA-Part B Program.

Rehabilitation Act of 1973
29 U.S.C. Sections 706(8), 794, 794a, 794b

This portion of the Rehabilitation Act, originally authorized under P.L. 93-112 in 1973, generally referred to as Section 504, states that "no otherwise qualified individual with handicaps in the United States . . . shall, solely

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by reason of her or his handicap, be excluded from the participation in, or denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . . ." Unlike most of the other programs contained in this service, this civil rights legislation is not a federal grant program.

Developmental Disabilities Assistance and Bill of Rights Act
42 U.S.C. Sections 6000-6083

The Developmental Disabilities Assistance and Bill of Rights Act was originally authorized under P.L. 88-164. Amendments occurred throughout the '70s and '80s with the most recent reauthorization in 1987. The 1988 statute, P.L. 100-146, reauthorized the programs contained in the Act for three years. Reauthorization is scheduled for 1990. The programs under this Act include:

Subchapter I — General Provisions

This part of the Act sets out the purposes of the program "to provide assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity, and integration into the community; to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential; and to make grants to support a system in each State to protect the legal and human rights of persons with developmental disabilities."

Subchapter II — Federal Assistance for Planning Priority Area Activities for Persons with Developmental Disabilities

This part of the Act provides for the payment of funds to States to assist in the development of a comprehensive, coordinated system of services for persons with developmental disabilities according to established federal and state priorities.

Subchapter III — Protection and Advocacy of Individual Rights

In order for a state to receive a grant under Subchapter II, it must have in effect a system to protect and advocate the rights of persons with developmental disabilities. This part provides for funds to assist states in establishing and maintaining such a system.

Subchapter IV — University Affiliated Programs

This part of the Act provides for grants to university affiliated programs to assist in the provision of interdisciplinary training, the demonstration of exemplary services and technical assistance, and the dissemination of information to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

Subchapter V — Projects of National Significance

This part authorizes the awarding of grants and contracts for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

Head Start Act
42 U.S.C. Sections 9831-9852

This program is authorized under Subchapter II of Chapter 105, Community Services Programs of Title 42 of U.S. Code. The Head Start program originally was authorized in 1964 as part of the Economic Opportunity Act of 1964. The program has been reauthorized several times since then and in 1990 is again scheduled for reauthorization. The primary purpose of the program is to provide financial assistance to programs, focused primarily upon children from low-income families who have not reached the age of compulsory school attendance, in order: 1) to provide comprehensive health, nutritional, educational, social, and other services to assist the children to attain full potential; and 2) to provide for the direct participation of such children in the development, conduct, and overall program direction at the local level.

Comprehensive Child Development Program
42 U.S.C. Sections 9881-9887

This is a new program enacted in 1988 by P.L. 100-297. The program is authorized under Subchapter V of Chapter 105, Community Services Programs of Title 42 of U.S. Code. The Comprehensive Child Development Program is designed to award grants to communities to encourage intensive and comprehensive supportive services which will enhance the physical, social, emotional, and intellectual development of low-income children from birth to compulsory school age, including providing necessary support to their parents and other family members.

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GENERAL EDUCATION PROVISIONS ACT

(Selected Sections)

20 U.S.C Secs. 1221-1234h

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GENERAL EDUCATION PROVISIONS ACT

(Selected Sections)

20 U.S.C. Secs. 1221-1234h

CHAPTER 31—GENERAL PROVISIONS CONCERNING EDUCATION

Sec. 1221 General Provisions

SHORT TITLE

(a) This chapter may be cited as the "General Education Provisions Act."

APPLICABILITY OF CHAPTER

(b) Except where otherwise specified, the provisions of this chapter shall apply to any program for which an administrative head of an education agency has administrative responsibility as provided by law or by delegation of authority pursuant to law.

DEFINITIONS; APPLICABILITY OF CIVIL RIGHTS PROVISIONS UNAFFECTED

(c)(1) For the purposes of this chapter, the term—

(A) "applicable program" means any program to which this chapter is, under the terms of subsection (b) of this section, applicable;

(B) "applicable statute" means—

(i) the Act or the title, part or section of an Act, as the case may be, which authorizes the appropriation for an applicable program;

(ii) this chapter; and

(iii) any other statute which under its terms expressly controls the administration of an applicable program;

(C), (D) Omitted

(E) "Director" means the Director of the National Institute of Education; and

(F) "Secretary" means the Secretary of Education.

(2) Nothing in this chapter shall be construed to affect the applicability of the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to any program subject to the provisions of this chapter.

(3) No Act making appropriations to carry out an applicable program shall be considered an applicable statute.

AUTHORIZATION OF APPROPRIATIONS

(d) Except as otherwise limited in this chapter, there are authorized to be appropriated for any fiscal year such sums as may be necessary to carry out the provisions of this chapter.

Pub. L. 90-247, Title IV, Sec. 400, formerly Sec. 401, Jan. 2, 1968, 81 Stat. 814; Pub. L. 90-576, Title III, Sec. 301(a), Oct. 16, 1968, 82 Stat. 1094; Pub. L. 91-230, Title IV, Sec. 401(a)(2), Apr. 13, 1970, 84 Stat. 164, renumbered Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, and amended Pub. L. 93-380, Title V, Sec. 505(a)(1), Aug. 21, 1974, 88 Stat. 561; Pub. L. 96-88, Title III, Sec. 301(a)(1), (2)(A), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1221e-1a. State responsibility to furnish information

Subchapter I—Offices And Personnel In Department Of Education

REPORT TO SECRETARY; CONTENTS

(a) The Secretary shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall—

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program for such fiscal year and specify from which appropriation Act or Acts these funds were available; and

(3) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

REPORT ANALYSIS AND STATISTICAL DATA; SUBMITTAL TO CONGRESSIONAL COMMITTEES

(b) On or before March 31 of each year, the Secretary shall submit to the Committee on Labor and Human Resources of the Senate and to the Committee on Education and Labor of the House of Representatives an analysis of these reports and a compilation of statistical data derived therefrom.

Pub. L. 90-247, Title IV, Sec. 406A, formerly Sec. 437, as added Pub. L. 93-380, Title V, Sec. 512(a), Aug. 21, 1974, 88 Stat. 571, amended Pub. L. 94-273, Sec. 17, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94-482, Title V, Sec. 501(f)(2), (3), Oct. 12, 1976, 90 Stat. 2237; S. Res. 4, Feb. 4, 1977, renumbered Pub. L. 95-561, Title XII, Sec. 1231(a)(2), Nov. 1, 1978, 92 Stat. 2342, and amended S. Res. 30, Mar. 7, 1979; Pub. L. 96-88, Title III, Sec. 301(a)(1).

Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 98-211, Sec. 18(b), Dec. 8, 1983, 97 Stat. 1417.

Subchapter II—Appropriations And Evaluations

PART 1—APPROPRIATIONS

Sec. 1222. Repealed

Pub. L. 93-380, Title V, Sec. 506(a)(1)(B), Aug. 21, 1974, 88 Stat. 562.

Sec. 1223. Advance appropriation of funds for elementary and secondary education programs

To the end of affording the responsible State, local, and Federal officers concerned adequate notice of available Federal financial assistance for education, appropriations for grants, contracts, or other payments under any applicable program are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application under such program will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

Pub. L. 90-247, Title IV, Sec. 411, formerly Sec. 403, Jan. 2, 1968, 81 Stat. 814; Pub. L. 91-230, Title IV, Sec. 401(a)(4), Apr. 13, 1970, 84 Stat. 165, renumbered Sec. 412, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, renumbered Sec. 411 Pub. L. 93-380, Title V, Sec. 506(a)(1)(C), Aug. 21, 1974, 88 Stat. 562.

Sec. 1224. Repealed

Pub. L. 93-380, Title V, Sec. 506(a)(1)(B), Aug. 21, 1974, 88 Stat. 562.

Sec. 1225. Availability of appropriations

ACADEMIC OR DIFFERING FISCAL YEAR

(a) Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available for expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

SUCCEEDING FISCAL YEAR

(b)(1) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this chapter is applicable during any fiscal year, which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.

(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with—

(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.

INSTITUTION OF JUDICIAL PROCEEDINGS

(c) If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 1341(a) of title 31 and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding.

Pub. L. 90-247, Title IV, Sec. 412, formerly Sec. 405, Jan. 2, 1968, 81 Stat. 815; Pub. L. 91-230, Title IV, Sec. 401(a)(5), (7), (8), Apr. 13, 1970, 84 Stat. 165, renumbered Sec. 414, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, renumbered Sec. 412, and amended Pub. L. 93-380, Title V, Sec. 506(a)(1)(D), (E), Aug. 21, 1974, 88 Stat. 562; Pub. L. 94-273, Sec. 3(12), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95-112, Sec. 5, Sept. 24, 1977, 91 Stat. 912; Pub. L. 95-562, Title XII, Sec. 1245, Nov. 1, 1978, 92 Stat. 2354.

Sec. 1226. Availability of appropriations

Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this chapter, funds appropriated for any fiscal year to carry out any of the programs to which this chapter is applicable shall remain available for obligation and expenditure until the end of such fiscal year.

Pub. L. 90-247, Title IV, Sec. 413, formerly Sec. 406, as added Pub. L. 90-576, Title III, Sec. 301(b), Oct. 16, 1968, 82 Stat. 1094, amended Pub. L. 91-230, Title IV, Sec. 401(a)(9), Apr. 13, 1970, 84 Stat. 166, renumbered Sec. 415, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 82 Stat. 326, and renumbered Sec. 413, Pub. L. 93-380, Title V, Sec. 506(a)(2)(A), Aug. 21, 1974, 88 Stat. 563.

Sec. 1226a. Contingent extension of programs

TIME OF EXTENSION; AMOUNT OF APPROPRIATIONS

(a) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(1) of the authorization of appropriations for an applicable program; or

(2) of the duration of an applicable program;

either—

(A) has passed or has formally rejected legislation which would have the effect of extending the authorization or duration (as the case may be) of that program; or

(B) by action of either the House of Representatives or the Senate, approves a resolution stating that the provisions of this section shall no longer apply to such program;

such authorization or duration is hereby automatically extended for—

(i) two additional fiscal years for any applicable program authorized to be included in the Appropriation Act for the fiscal year preceding the fiscal year for which appropriations are available for obligation, or

(ii) one additional fiscal year for any other applicable program.

The amount appropriated for each additional fiscal year shall not exceed the amount which the Congress could, under the terms of the law for which the appropriation is made, have appropriated for such program during such terminal year.

PASSAGE OF LEGISLATION; ACTS AND DETERMINATIONS OF SECRETARY NECESSARY FOR CONTINUATION OF APPLICABLE PROGRAM

(b)(1) For the purposes of clause (A) of subsection (a) of this section, the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(2) In any case where the Secretary is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of an applicable program, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of subsection (a) of this section which follows clause (B) thereof is in operation.

Pub. L. 90-247, Title IV, Sec. 414, as added Pub. L. 93-380, Title V, Sec. 506(a)(2)(B), Aug. 21, 1974, 88 Stat. 563, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 96-374, Title XIII, Sec. 1301, Oct. 3, 1980, 94 Stat. 1496.

Sec. 1226a-1. Payments; installments, advances or reimbursements, and adjustments

Payments pursuant to grants or contracts under any applicable program may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

Pub. L. 90-247, Title IV, Sec. 415, formerly Sec. 425, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 170, renumbered Sec. 435, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, renumbered Sec. 415, Pub. L. 95-561, Title XII, Sec. 1231(a)(1), Nov. 1, 1978, 92 Stat. 2342, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Subchapter III—General Requirements And Conditions Concerning Operation And Administration Of Education Programs; General Authority of Secretary

PART I—GENERAL AUTHORITY

Sec. 1231b-2. Review of applications

PERSONS AGGRIEVED; FINAL STATE EDUCATIONAL AGENCY ACTIONS; HEARING; RULING AND REASONS FOR RULING; RESCISSION OF FINAL ACTIONS

(a) In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Secretary, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.], any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law, rules, regulations, or guidelines governing the applicable program, in (1) disapproving or failing to approve its application or program in whole or part, (2) failing to provide funds in amounts in accord with the requirements of laws and regulations, (3) ordering, in accordance with the final State audit resolution determination, the repayment of misspent or misapplied Federal funds, or (4) terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing the State educational agency shall issue its written ruling, including reasons therefor. If it determines such final action was contrary to Federal or State law, or the rules, regulations, and guidelines, governing such applicable program it shall rescind such final action.

APPEALS TO SECRETARY; PERSONS AGGRIEVED; NOTICE; ORDERS PRESCRIBING APPROPRIATE AGENCY ACTIONS; FINALITY OF AGENCY FACT FINDINGS; INTERIM ORDERS PENDING APPEAL OR REVIEW

(b) Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under subsection (a) of this section may appeal such action to the Secretary. An appeal under this subsection may be taken only if notice of such appeal is filed with the Secretary within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a) of this section. If, on such appeal, the Secretary determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Secretary may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

RECORDS; AVAILABILITY

(c) Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

TERMINATION OF ASSISTANCE FOR NONCOMPLIANCE WITH PROVISIONS OR ORDERS

(d) If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Secretary under subsection (b) of this section, the Secretary shall forthwith terminate all assistance to the State educational agency under the applicable program affected.

Pub. L. 90-247, Title IV, Sec. 425, as added Pub. L. 93-380, Title V, Sec. 508(a), Aug. 21, 1974, 88 Stat. 566, and amended Pub. L. 95-561, Title XII, Sec. 1247, Nov. 1, 1978, 92 Stat. 2354; Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1231c. Advice, counsel and technical assistance

STATE EDUCATIONAL AGENCIES, INSTITUTIONS OF HIGHER EDUCATION

(a) For the purpose of carrying out more effectively Federal education programs, the Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of, applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

COST ALLOCATION, COLLECTION, ETC. BY LOCAL EDUCATIONAL AGENCIES

(b) The Secretary shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

DISSEMINATION

(c) In awarding contracts and grants for the development of curricula or instructional materials, the Secretary and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contractS with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the curricula and instructional materials will reach the target populations for which they were developed.

ANNUAL REPORT BY SECRETARY

(d) The Secretary's annual report shall contain a statement of the Secretary's activities under this section.

Pub. L. 90-247, Title IV, Sec. 426, formerly Sec. 414, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 167, renumbered Sec. 424, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, renumbered Sec. 426, Pub. L. 93-380, Title V, Sec. 508(a), Aug. 21, 1974, 88 Stat. 565, and amended Pub. L. 95-561, Title XII, Sec. 1248, Nov. 1, 1978, 92 Stat. 2354; Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1231c-1. Equalization assistance

GRANTS FOR DEVELOPMENT AND IMPLEMENTATION OF PLANS TO ACHIEVE RESOURCE EQUALIZATION

(a) The Secretary is authorized from the sums appropriated pursuant to subsection (d) of this section to make grants to States to assist in developing and implementing plans to revise their systems of financing elementary and secondary education in order to achieve a greater equalization of resources among school districts. Any State desiring to receive such a grant shall (1) submit an application approved by the State legislature for such funds, (2) provide that State funds will match the Federal funds on a dollar for dollar basis, and (3) show how these efforts build upon the knowledge gained through the plans developed pursuant to section 246 of this title.

MODELS AND MATERIALS; TRAINING CENTERS

(b) The Secretary is authorized, from sums appropriated pursuant to subsection (d) of this section, (1) to develop and disseminate models and materials useful to the States in planning and implementing revisions of their school financing systems, and (2) to establish temporary national and regional training centers to assist those involved in school finance in providing the level of expertise needed by the States in revising their financing systems.

DISSEMINATION OF INFORMATION

(c) The Secretary shall (1) designate a unit within the Department of Education to serve as a national dissemination center for information on the States' efforts to achieve a greater equalization of resources for elementary and secondary education, and (2) develop an analysis of what has been learned through the use of funds available under section 246 of this title and disseminate the results of this analysis.

AUTHORIZATION OF APPROPRIATIONS

(d) There are hereby authorized to be appropriated $4,000,000 for each of the fiscal years ending prior to September 30, 1983, for the purposes of this section.

Pub. L. 90-247, Title IV, Sec. 426A, as added Pub. L. 95-561, Title XII, Sec. 1202, Nov. 1, 1978, 92 Stat. 2334, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), (b)(2), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 678, 692.

Sec. 1231d. Parental involvement and dissemination

In the case of any applicable program in which the Secretary determines that parental participation at the State or local level would increase the effectiveness of the program in achieving its purposes, he shall promulgate regulations with respect to such program setting forth criteria designed to encourage such participation. If the program for which such determination provides for payments to local educational agencies, applications for such payments shall—

(1) set forth such policies and procedures as will ensure that programs and projects assisted under the application have been planned and developed, and will be operated, in consultation with, and with the involvement of, parents of the children to be served by such programs and projects;

(2) be submitted with assurance that such parents have had an opportunity to present their views with respect to the application; and

(3) set forth policies and procedures for adequate dissemination of program plans and evaluations to such parents and the public.

Pub. L. 90-247, Title IV, Sec. 427, formerly Sec. 415, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 168, renumbered Sec. 425, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, renumbered Sec. 427, Pub. L. 92-380, Title V, Sec. 508(a), Aug. 21, 1974, 88 Stat. 565, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1231e. Use of funds withheld for failure to comply with other provisions of Federal law

At any time that the Secretary establishes an entitlement, or makes an allotment or reallotment to any State, under any applicable program, he shall reduce such entitlement, allotment, or reallotment by such amount as he determines it would have been reduced, had the data on which the entitlement, allotment, or reallotment is based excluded all data relating to local educational agencies of the State which on the date of the Secretary's action are ineligible to receive the Federal financial assistance involved because of a failure to comply with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. Any appropriated funds which will not be paid to a State as a result of the preceding sentence may be used by the Secretary for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964 [42 U.S.C. 2000c-4].

Pub. L. 90-247, Title IV, Sec. 428, formerly Sec. 416, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 168, renumbered Sec. 426, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, renumbered Sec. 428, Pub. L. 93-380, Title V, Sec. 508(a), Aug. 21, 1974, 88 Stat. 565, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1231f. Authority to furnish information

The Secretary is authorized to transfer transcripts or copies of other records of the Department of Education to State and local officials, public and private organizations, and individuals.

Pub. L. 90-247, Title IV, Sec. 429, formerly Sec. 417, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 168, renumbered Sec. 427, Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 82 Stat. 326, renumbered Sec. 429, and amended Pub. L. 93-380, Title V, Secs. 501(b)(2), 508(a), Aug. 21, 1974, 88 Stat. 558, 565; Pub. L. 96-88, Title III, Sec. 301(a)(1), (b)(2), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 678, 692.

PART II—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

Sec. 1231g. Applications

SUBMISSION AND AMENDMENTS OF APPLICATIONS

(a) Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, the Secretary is authorized to provide for the submission of applications for assistance effective for three fiscal years under any applicable program with whatever amendments to such applications being required as the Secretary determines essential.

UNIFORM DATES

(b) The Secretary shall, insofar as is practicable, establish uniform dates during the year for the submission of applications under all applicable programs and for the approval of such applications.

DEVELOPMENT OF COMMON APPLICATIONS

(c) The Secretary shall, insofar as is practicable, develop and require the use of—

(1) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local

agencies pursuant to some objective formula, and such application shall be used as the single application for as many of these programs as is practicable;

(2) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies on a competitive or discretionary basis, and such application shall be used as the single application for as many of such programs as is practicable; and

(3) a common application for grants to local educational agencies in applicable programs which are directly administered by the Secretary, and such application shall be used as the single application for as many of these programs as is practicable.

Pub. L. 90-247, Title IV, Sec. 430, as added Pub. L. 95-561, Title XII, Sec. 1213, Nov. 1, 1978, 92 Stat. 2342, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1232. Regulations

"REGULATION" DEFINED; CITATION OF AUTHORITY

(a)(1) For the purpose of this section, the term "regulation" means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Secretary.

(2) Regulations issued by the Secretary, or by any official of the Department of Education, in connection with, or affecting, the administration of any applicable program shall contain immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

PUBLICATION IN FEDERAL REGISTER; OPPORTUNITY FOR COMMENT; EXCEPTIONS; RECONSIDERATION; WAIVER OF THIRTY DAY PERIOD

(b)(1) No proposed regulation prescribed for the administration of any applicable program may take effect until thirty days after it is published in the Federal Register.

(2)(A) During the thirty-day period prior to the date upon which such regulation is to be effective, the Secretary shall, in accordance with the provisions of section 553 of title 5, offer any interested party an opportunity to make comment upon, and take exception to, such regulation and shall reconsider any such regulation upon which comment is made or to which exception is taken.

(B) If the Secretary determines that the thirty-day requirement in paragraph (1) will cause undue delay in the implementation of a regulation, thereby causing extreme hardship for the intended beneficiaries of an applicable program, he shall notify the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. If neither committee disagrees with the determination of the Secretary within 10 days after such notice, the Secretary may waive such requirement with respect to such regulation.

UNIFORM APPLICATION

(c) All such regulations shall be uniformly applied and enforced throughout the fifty States.

TRANSMITTAL TO SPEAKER OF HOUSE AND PRESIDENT OF SENATE; EFFECTIVE DATE; CONCURRENT RESOLUTION OF DISAPPROVAL; FAILURE TO ADOPT; WAITING PERIOD AFFECTED BY ADJOURNMENTS; FORMAL STATEMENT OF OBJECTION; SUSPENSION OF EFFECTIVE DATE LETTER; PRESCRIBED WAITING PERIOD

(d)(1) Concurrently with the publication in the Federal Register of any final regulation (except expected family contribution schedules and any amendments thereto promulgated pursuant to sections 1078(a)(2)(D) and (E) and 1089(a)(1) and (2) of this title) as required in subsection (b) of this section, such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such final regulation shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the final regulation is inconsistent with the Act from which it derives its authority, and disapprove such final regulation, in whole or in part. Failure of the Congress to adopt such a concurrent resolution with respect to any such final regulation prescribed under any such Act, shall not represent, with respect to such final regulation, an approval or finding or consistency with the Act from which it derives its authority for any purpose not shall such failure to adopt a concurrent resolution be construed as evidence of an approval or findings of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

(2) The forty-five-day period specified in paragraph (1) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days. In any such period of adjournment, the forty-five days shall continue to run, but if such period of adjournment is thirty calendar days, or less, the forty-five-day period shall not be deemed to have elapsed earlier than ten days after the end of such adjournment. In any period of adjournment which lasts more than thirty days, the forty-five-day period shall be deemed to have elapsed after thirty calendar days has elapsed, unless, during those thirty calendar days, either the Committee on Education and Labor of the House of Representatives, or the Committee on Labor and Human Resources of the Senate, or both, shall have directed its chairman, in accordance with said committee's rules, and the rules of that House, to transmit to the appropriate department or agency head a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less

than twenty days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this subsection. In no event shall the final regulation go into effect until the forty-five-day period shall have elapsed, as provided for in this subsection, for both Houses of the Congress.

MODIFICATION BY AGENCY; DISPOSITION OF EARLIER CONGRESSIONAL DISAPPROVAL

(e) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the agency which issued such regulation may thereafter issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modifications differs from the proposed regulation of general applicability earlier disapproved, and how the agency believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

APPLICABLE PROGRAMS

(f) For the purposes of subsections (d) and (e) of this section, activities under sections 1221d, 1221e, and 1221e-1 of this title, and under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.] shall be deemed to be applicable programs.

FINAL REGULATIONS; REQUIREMENTS AND ENFORCEMENT

(g) Not later than sixty days after the enactment of any part of any Act affecting the administration of any applicable program, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Secretary has planned to promulgate final regulations implementing such Act or part of such Act. Such schedule shall provide that all such final regulations shall be promulgated within one hundred and eighty days after the submission of such schedule. Except as is provided in the following sentence, all such final regulations shall be promulgated in accordance with such schedule. If the Secretary finds that, due to circumstances unforseen[1] at the time of the submission of any such schedule, he cannot comply with a schedule submitted pursuant to this subsection, he shall notify such committees of such finding and submit a new schedule. If both such committees notify the Secretary of their approval of such new schedule, such final regulations shall be promulgated in accordance with such new schedule.

Pub. L. 90-247, Title IV, Sec. 431, formerly Sec. 421, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 169, renumbered Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326, and amended Pub. L. 93-380, Title V, Sec. 509(a), Aug. 21, 1974, 88 Stat. 566; Pub. L. 94-142, Sec. 7, Nov. 29, 1975, 89 Stat. 796; Pub. L. 94-482, Title IV, Sec. 405, Oct. 12, 1976, 90 Stat. 2231; S. Res. 4, Feb. 4, 1977; S. Res. 30, Mar. 7, 1979; Pub. L. 96-88, Title III, Sec. 301, Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 96-374, Title XIII, Sec. 1302, Oct. 3, 1980, 94 Stat. 1497; Pub. L. 97-35, Title V, Sec. 533(a)(3), Aug. 13, 1981, 95 Stat. 453.

Sec. 1232-1. Repealed

Pub. L. 98-511, Title I. Sec. 109(b), Oct. 19, 1984, 98 Stat. 2369.

Sec. 1232a. Prohibition against Federal control of education

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

Pub. L. 90-247, Title IV, Sec. 432, formerly Sec. 422, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 834 Stat. 169, renumbered and amended Pub. L. 92-318, Title III, Sec. 301(a)(1), Title VII, Sec. 717(b), June 23, 1972, 86 Stat. 326, 369; Pub. L. 94-482, Title IV, Sec. 404(b), Oct. 12, 1976, 90 Stat. 2230.

Sec. 1232b. Labor standards

Except for emergency relief under section 241-1 of this title, all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended [40 U.S.C. 276a et seq.]. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of title 40.

Pub. L. 90-247, Title IV, Sec. 433, formerly Sec. 423, as added Pub. L. 91-230, Title IV, Sec. 401(a)(10), Apr. 13, 1970, 84 Stat. 169, and renumbered Pub. L. 92-318, Title III, Sec. 301(a)(1), June 23, 1972, 86 Stat. 326.

PART III—ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS BY STATES AND LOCAL EDUCATIONAL AGENCIES

Sec. 1232c. State educational agency monitoring and enforcement

STATE PLAN

(a) In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Secretary may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Secretary may require such plan to provide—

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[1] So in original.

(1) for periodic visits by State personnel of programs administered by local agencies to determine whether such programs are being conducted in accordance with such requirements;

(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency; and

(3) that the State investigate and resolve all complaints received by the State, or referred to the State by the Secretary, relating to the administration of such programs.

STATE ENFORCEMENT OF FEDERAL REQUIREMENTS

(b) In order to enforce the Federal requirements under any applicable program the State may—

(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met; except that the State shall not finally disapprove such an application unless the State provides the local agency an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a substantial failure by the local agency to comply with any of such requirements;

(2) suspend payments to any local agency, in whole or in part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements, except that (A) the State shall not suspend such payments until fifteen days after the State provides the local agency an opportunity to show cause why such action should not be taken and (B) no such suspension shall continue in effect longer than sixty days unless the State within such period provides the notice for a hearing required under paragraph (3) of this subsection;

(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements.

Any withholding of payments under paragraph (3) of this subsection shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

Pub. L. 90-247, Title IV, Sec. 434, as added Pub. L. 95-561, Title XII, Sec. 1231(a)(3), Nov. 1, 1978, 92 Stat. 2342, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692.

Sec. 1232d. Single State application

SUBMISSION OF GENERAL APPLICATION; APPROVAL BY STATE SUPERVISORY AUTHORITY

(a) In the case of any State which applies, contracts, or submits a plan, for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject, in the case of programs under chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq., 2911 et seq.]) to the Secretary a general application containing the assurances set forth in subsection (b) of this section. Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

ASSURANCES

(b) An application submitted under subsection (a) of this section shall set forth assurances, satisfactory to the Secretary—

(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

(3) that the State will adopt and use proper methods of administering each applicable program, including—

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Secretary may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) that the State will make reports to the Secretary (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Secretary to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 1232f of this title, and afford access to the records as the Secretary may find necessary to carry out his duties;

(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

(C) the State will hold public hearings on the proposed plans if required by the Secretary by regulation; and

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations; and

(8) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

EFFECTIVE TERM OF GENERAL APPLICATION

(c) Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Secretary shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

Pub. L. 90-247, Title IV, Sec. 435, as added Pub. L. 95-561, Title XII, Sec. 1231(a)(3), Nov. 1, 1978, 92 Stat. 2343, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 98-511, Title VII, Sec. 706(a), Oct. 19, 1984, 98 Stat. 2406; Pub. L. 100-297, Title III, Sec. 3501(c), Apr. 28, 1988, 102 Stat. 357.

Sec. 1232e. **Single local educational agency application**

GENERAL APPLICATION TO STATE AGENCY OR BOARD

(a) Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b) of this section. That application shall cover the participation by that local education agency in all such programs.

ASSURANCES

(b) The general application submitted by a local educational agency under subsection (a) of this section shall set forth assurances—

(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) that the local educational agency will make reports to the State agency or board and to the Secretary as may reasonably be necessary to enable the State agency or board and the Secretary to perform their duties and that the local educational agency will maintain such records, including the records required under section 1232f of this title, and provide access to those records, as the State agency or board or the Secretary deem necessary to perform their duties;

(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) that in the case of any project involving construction—

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 794 of title 29 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals;

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and

(9) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

EFFECTIVE TERM OF GENERAL APPLICATION

(c) A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.

Pub. L. 90-247, Title IV, Sec. 436, as added Pub. L. 95-561, Title XII, Sec. 1231(a)(3), Nov. 1, 1978, 92 Stat. 2345, and amended Pub. L. 96-88, Title III, Sec. 301(a)(1), Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 98-511, Title VII, Sec. 706(b), Oct. 19, 1984, 98 Stat. 2407.

PART IV—RECORDS; PRIVACY; LIMITATION ON WITHHOLDING FEDERAL FUNDS

Sec. 1232f. Records

RECORDS KEPT BY RECIPIENT; FULL DISCLOSURE; FIVE-YEAR MAINTENANCE PERIOD

(a) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activity for which the funds are used.

AUDIT EXAMINATION

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit examination, to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements to which reference is made in subsection (a) of this section, or which may relate to the compliance of the recipient with any requirement of an applicable program.

Pub. L. 90-247, Title IV, Sec. 437, as added Pub. L. 95-561, Title XII, Sec. 1231(c), Nov. 1, 1978, 92 Stat. 2346.

Sec. 1232g. Family educational and privacy rights

CONDITIONS FOR AVAILABILITY OF FUNDS TO EDUCATIONAL AGENCIES OR INSTITUTIONS; INSPECTION AND REVIEW OF EDUCATION RECORDS; SPECIFIC INFORMATION TO BE MADE AVAILABLE; PROCEDURE FOR ACCESS TO EDUCATION RECORDS; REASONABLENESS OF TIME FOR SUCH ACCESS; HEARINGS; WRITTEN EXPLANATIONS BY PARENTS; DEFINITIONS

(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's rights of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

RELEASE OF EDUCATION RECORDS; PARENTAL CONSENT REQUIREMENT; EXCEPTIONS; COMPLIANCE WITH JUDICIAL ORDERS AND SUBPOENAS; AUDIT AND EVALUATION OF FEDERALLY-SUPPORTED EDUCATION PROGRAMS; RECORD-KEEPING

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable) information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interest;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety or the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs; *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

SURVEYS OR DATA-GATHERING ACTIVITIES; REGULATIONS

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

STUDENTS' RATHER THAN PARENTS' PERMISSION OR CONSENT

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution or postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

INFORMING PARENTS OR STUDENTS OF RIGHTS UNDER THIS SECTION

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

ENFORCEMENT; TERMINATION OF ASSISTANCE

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

OFFICE AND REVIEW BOARD; CREATION; FUNCTION

(g) The Secretary shall establish or designate an office and review board within the Department of Education for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Pub. L. 90-247, Title IV, Sec. 438, as added Pub. L. 93-380, Title V, Sec. 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub. L. 93-568, Sec. 2(a), Dec. 31, 1974, 88 Stat. 1858; Pub. L. 96-46, Sec. 4(c), Aug. 6, 1979, 93 Stat. 342; Pub. L. 96-88, Title III, Sec. 301, Title V, Sec. 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095.

Sec. 1232h. Protection of pupil rights

INSPECTION BY PARENTS OR GUARDIANS OF INSTRUCTIONAL MATERIAL

(a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATIONS, TESTING, OR TREATMENT

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

(1) political affiliations;

(2) mental and psychological problems potentially embarrassing to the student or his family;

(3) sex behavior and attitudes;

(4) illegal, anti-social, self-incriminating and demeaning behavior;

(5) critical appraisals of other individuals with whom respondents have close family relationships;

(6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) income (other than than required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

Pub. L. 90-247, Title IV, Sec. 439, as added Pub. L. 93-380, Title V, Sec. 514(a), Aug. 21, 1974, 88 Stat. 574, and amended Pub. L. 95-561, Title XII, Sec. 1250, Nov. 1, 1978, 92 Stat. 2355.

Sec. 1232i. Limitations on withholding of Federal assistance

REFUSAL TO SUPPLY PERSONAL DATA ON STUDENTS OR FAMILIES

(a) Except as provided in section 1232g(b)(1)(D) of this title, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

NONCOMPLIANCE WITH NONDISCRIMINATION PROVISIONS OF FEDERAL LAW

(b) The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs

which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

FAILURE TO COMPLY WITH IMPOSITION OF QUOTAS

(c) It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

Pub. L. 90-247, Title IV, Sec. 440, as added Pub. L. 93-380, Title V, Sec. 515(a), Aug. 21, 1974, 88 Stat. 574, and amended Pub. L. 94-482, Title IV, Secs. 407, 408, Oct. 12, 1976, 90 Stat. 2232, 2233.

Subchapter V—Enforcement

Sec. 1234. Office of Administrative Law Judges

ESTABLISHMENT; DUTIES

(a) The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this subchapter referred to as the "Office") which shall conduct—

(1) recovery of funds hearings pursuant to section 1234a of this title,

(2) withholding hearings pursuant to section 1234d of this title,

(3) cease and desist hearings pursuant to section 1234e of this title, and

(4) other proceedings designated by the Secretary.

APPOINTMENT

(b) The administrative law judges (hereinafter "judges") of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5.

EMPLOYMENT REQUIREMENTS; CHIEF JUDGE

(c) The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates' experience in State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

ASSIGNMENT OF JUDGES

(d) For the purposes of conducting hearings described in subsection (a) of this section, the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the judge to be assigned to the case.

REVIEW AND EVIDENTIARY FUNCTIONS

(e) The judge shall review and may require that evidence be taken on the sufficiency of the preliminary departmental determination as set forth in section 1234a of this title.

CONDUCT OF PROCEEDINGS; COSTS AND FEES OF PARTIES

(f)(1) The proceedings of the Office shall be conducted according to such rules as the Secretary shall prescribe by regulation in conformance with the rules relating to hearings in title 5, sections 554, 556, and 557.

(2) The provisions of title 5, section 504, relating to costs and fees of parties, shall apply to the proceedings before the Department.

DISCOVERY; SCOPE, TIME, ETC.; ISSUE AND ENFORCEMENT OF SUBPOENAS

(g)(1) In order to secure a fair, expeditious, and economical resolution of cases and where the judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—

(A) produce relevant documents;

(B) answer written interrogatories that inquire into relevant matters; and

(C) have depositions taken.

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

(2) In order to carry out the provisions of subsections (f)(1) and (g)(1) of this section, the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

MEDIATION OF DISPUTES

(h) The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 1234b of this title. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements made in compromise negotiations shall not be admissible in proceedings before the Office. Mediation shall be limited to 120 days, except that the mediator may grant extensions of such period.

PROFESSIONAL PERSONNEL; EMPLOYMENT, ASSIGNMENT, OR TRANSFER

(i) The Secretary shall employ, assign, or transfer sufficient professional personnel, including judges of the Office, to ensure that all matters brought before the Office may be dealt with in a timely manner.

Pub. L. 90-247, Title IV, Sec. 451, as added Pub. L. 95-561, Title XII, Sec. 1232, Nov. 1, 1978, 92 Stat. 2346, and Amended Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 349.

Sec. 1234a. Recovery of funds

PRELIMINARY DEPARTMENTAL DECISION; GROUNDS OF DETERMINATION; NOTICE REQUIREMENTS; PRIMA FACIE CASE; AMOUNT OF FUNDS RECOVERABLE

(a)(1) Whenever the Secretary determines that a recipient of a grant or cooperative agreement under an applicable program must return funds because the recipient has made an expenditure of funds that is not allowable under that grant or cooperative agreement, or has otherwise failed to discharge its obligation to account properly for funds under the grant or cooperative agreement, the Secretary shall give the recipient written notice of a preliminary departmental decision and notify the recipient of its right to have that decision reviewed by the Office and of its right to request mediation.

(2) In a preliminary departmental decision, the Secretary shall have the burden of stating a prima facie case for the recovery of funds. The facts to serve as the basis of the preliminary departmental decision may come from an audit report, an investigative report, a monitoring report, or other evidence. The amount of funds to be recovered shall be determined on the basis of section 1234b of this title.

(3) For the purpose of paragraph (2), failure by a recipient to maintain records required by law, or to allow the Secretary access to such records, shall constitute a prima facie case.

REVIEW OF PRELIMINARY DEPARTMENTAL DECISION; FORM AND CONTENTS OF APPLICATION FOR REVIEW; INADEQUATE PRELIMINARY DECISIONS; DUTIES OF RECIPIENT TO SUBRECIPIENTS AFTER PRELIMINARY DECISION; BURDEN OF PROOF

(b)(1) A recipient that has received written notice of a preliminary departmental decision and that desires to have such decision reviewed by the Office shall submit to the Office an application for review not later than 30 days after receipt of notice of the preliminary departmental decision. The application shall be in the form and contain the information specified by the Office. As expeditiously as possible, the Office shall return to the Secretary for such action as the Secretary considers appropriate any preliminary departmental decision which the Office determines does not meet the requirements of subsection (a)(2) of this section.

(2) In cases where the preliminary departmental decision requests a recovery of funds from a State recipient, that State recipient may not recover funds from an affected local educational agency unless that State recipient has—

(A) transmitted a copy of the preliminary departmental decision to any affected subrecipient within 10 days of the date that the State recipient in a State administered program received such written notice; and

(B) consulted with each affected subrecipient to determine whether the State recipient should submit an application for review under paragraph (1).

(3) In any proceeding before the Office under this section, the burden shall be upon the recipient to demonstrate that it should not be required to return the amount of funds for which recovery is sought in the preliminary departmental decision under subsection (a) of this section.

TIME FOR HEARING

(c) A hearing shall be set 90 days after receipt of a request for review of a preliminary departmental decision by the Office, except that such 90-day requirement may be waived at the discretion of the judge for good cause.

REVIEW OF FINDINGS OF FACT IN PRELIMINARY DECISION; CONCLUSIVENESS; REMAND; NEW OR MODIFIED FINDINGS

(d) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the Office may thereupon make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

TIME FOR FILING PETITION FOR REVIEW OF PRELIMINARY DECISION

(e) Parties to the proceeding shall have 30 days to file a petition for review of a decision of the administrative law judges with the Office of the Secretary.

STAY OF COLLECTION OR OTHER ADVERSE ACTION BY SECRETARY AGAINST RECIPIENT

(f)(1) If a recipient submits a timely application for review of a preliminary departmental decision, the Secretary shall take no collection action until the decision of the Office upholding the preliminary Department decision in whole or in part becomes final agency action under subsection (g) of this section.

(2) If a recipient files a timely petition for judicial review under section 1234g of this title, the Secretary shall take no collection action until judicial review is completed.

(3) The filing of an application for review under paragraph (1) or a petition for judicial review under paragraph (2) shall not affect the authority of the Secretary to take any other adverse action under this subchapter against the recipient.

PRELIMINARY DECISION AS FINAL AGENCY ACTION

(g) A decision of the Office regarding the review of a preliminary departmental decision shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action, or

(2) remands the decision to the Office.

PUBLICATION OF DECISIONS AS FINAL AGENCY ACTIONS

(h) The Secretary shall publish decisions that have become final agency action under subsection (g) of this section in the Federal Register or in another appropriate publication within 60 days.

COLLECTION AMOUNTS AND PROCEDURES

(i) The amount of a preliminary departmental decision under subsection (a) of this section for which review has not been requested in accordance with subsection (b) of this section, and the amount sustained by a decision of the Office or the Secretary which becomes final agency action under subsection (g) of this section, may be collected by the Secretary in accordance with chapter 37 of title 31.

COMPROMISE OF PRELIMINARY DEPARTMENTAL DECISIONS; PRECONDITIONS; NOTICE REQUIREMENTS

(j)(1) Notwithstanding any other provision of law, the Secretary may, subject to the notice requirements of paragraph (2), compromise any preliminary departmental decision under this section which does not exceed the amount agreed to be returned by more than $200,000, if the Secretary determines that (A) the collection of any or all or the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the preliminary departmental decision has been corrected and will not recur.

(2) Not less than 45 days prior to the exercise of the authority to compromise a preliminary departmental decision pursuant to paragraph (1), the Secretary shall publish in the Federal Register a notice of intention to do so. The notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

LIMITATION PERIOD RESPECTING RETURN OF FUNDS

(k) No recipient under an applicable program shall be liable to return funds which were expended in a manner not authorized by law more than 5 years before the recipient received written notice of a preliminary departmental decision.

FOREGOING OF INTEREST DURING PERIOD OF ADMINISTRATIVE REVIEW

(l) No interest shall be charged arising from a claim during the administrative review of the preliminary departmental decision.

Pub. L. 90-247, Title IV, Sect. 452, as added Pub. L. 95-561, Title XII, Sec. 1232, Nov. 1, 1978, 92 Stat. 2347, and amended Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 350.

Sec. 1234b. Measure of recovery

AMOUNT RETURNED PROPORTIONATE TO EXTENT OF HARM VIOLATION CAUSED TO AN IDENTIFIABLE FEDERAL INTEREST; REDUCTION; DETERMINATION OF IDENTIFIABLE FEDERAL INTEREST

(a)(1) A recipient determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, shall be required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. Such amount shall be reduced in whole or in part by an amount that is proportionate to the extent the mitigating circumstances caused the violation.

(2) For the purpose of paragraph (1), an identifiable Federal interest includes, but is not limited to, serving only eligible beneficiaries; providing only authorized services or benefits; complying with expenditure requirements and conditions (such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements); preserving the integrity of planning, application,

recordkeeping, and reporting requirements; and maintaining accountability for the use of funds.

REDUCTION OR WAIVER OF AMOUNT BASED ON MITIGATING CIRCUMSTANCES; BURDEN OF PROOF; DETERMINATION OF MITIGATING CIRCUMSTANCES; WEIGHT, ETC., OF WRITTEN REQUEST FOR GUIDANCE

(b)(1) When a State or local educational agency is determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, and mitigating circumstances exist, as described in paragraph (2), the judge shall reduce such amount by an amount that is proportionate to the extent the mitigating circumstances caused the violation. Furthermore, the judge is authorized to determine that no recovery is justified when mitigating circumstances warrant. The burden of demonstrating the existence of mitigating circumstances shall be upon the State or local educational agency.

(2) For the purpose of paragraph (1), mitigating circumstances exist only when it would be unjust to compel the recovery of funds because the State or local educational agency—

(A) actually and reasonably relied upon erroneous written guidance provided by the Department;

(B) made an expenditure or engaged in a practice after—

(i) the State or local educational agency submitted to the Secretary, in good faith, a written request for guidance with respect to the expenditure or practice at issue, and

(ii) a Department official did not respond within 90 days of receipt by the Department of such request; or

(C) actually and reasonably relied upon a judicial decree issued to the recipient.

(3) A written request for guidance as described in paragraph (2) sent by certified mail (return receipt requested) shall be conclusive proof of receipt by the Department.

(4) If the Secretary responds to a written request for guidance described in paragraph (2)(B) more than 90 days after its receipt, the State or local educational agency that submitted the request shall comply with the guidance received at the earliest practicable time.

(5) In order to demonstrate the existence of the mitigating circumstances described in paragraph (2)(B), the State or local educational agency shall demonstrate that—

(A) the written request for guidance accurately described the proposed expenditure or practice and included the facts necessary for a determination of its legality; and

(B) the written request for guidance contained a certification by the chief legal officer of the State educational agency that such officer had examined the proposed expenditure or practice and believed the proposed expenditure or practice was permissible under then applicable State and Federal law; and

(C) the State or local educational agency reasonably believed that the proposed expenditure or practice was permissible under then applicable State and Federal law.

(6) The Secretary shall disseminate to State educational agencies responses to written requests for guidance, described in paragraph (5), that reflect significant interpretations of applicable law or policy.

REVIEW OF WRITTEN REQUESTS FOR GUIDANCE ON PERIODIC BASIS

(c) The Secretary shall periodically review the written requests for guidance submitted under this section to determine the need for new or supplementary regulatory or other guidance under applicable programs.

Pub. L. 90-247, Title IV, Sec. 453, as added Pub. L. 95-561, Title XII, Sec. 1232, Nov. 1, 1978, 92 Stat. 2349, and amended Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 353.

Sec. 1234c. Remedies for existing violations

(a) Whenever the Secretary has reason to believe that any recipient of funds under any applicable program is failing to comply substantially with any requirements of law applicable to such funds, the Secretary may—

(1) withhold further payments under that program, as authorized by section 1234d of this title;

(2) issue a complaint to compel compliance through a cease and desist order of the Office, as authorized by section 1234e of this title;

(3) enter into a compliance agreement with a recipient to bring it into compliance, as authorized by section 1234f of this title; or

(4) take any other action authorized by law with respect to the recipient.

(b) Any action, or failure to take action, by the Secretary under this section shall not preclude the Secretary from seeking a recovery of funds under section 1234a of this title.

Pub. L. 90-247, Title IV, Sec. 454, as added Pub. L. 95-561, Title XII, Sec. 1232, Nov. 1, 1978, 92 Stat. 2349, and amended Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 354.

Sec. 1234d. Withholding

DISCRETIONARY AUTHORITY OVER FURTHER PAYMENTS UNDER APPLICABLE PROGRAM

(a) In accordance with section 1234c of this title, the Secretary may withhold from a recipient, in whole or in part, further payments (including payments for administrative costs) under an applicable program.

NOTICE REQUIREMENTS

(b) Before withholding payments, the Secretary shall notify the recipient, in writing, of—

(1) the intent to withhold payments;

(2) the factual and legal basis for the Secretary's belief that the recipient has failed to comply substantially with a requirement of law; and

(3) an opportunity for a hearing to be held on a date at least 30 days after the notification has been sent to the recipient.

HEARING

(c) The hearing shall be held before the Office and shall be conducted in accordance with the rules prescribed pursuant to subsections (f) and (g) of section 1234 of this title.

SUSPENSION OF PAYMENTS, AUTHORITIES, ETC.

(d) Pending the outcome of any hearing under this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

FINDINGS OF FACT

(e) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the Office may thereupon make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

FINAL AGENCY ACTION

(f) The decision of the Office in any hearing under this section shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action; or

(2) remands the decision of the Office.

Pub. L. 90-247, Title IV, Sec. 455, as added Pub. L. 95-561, Title XII, Sec. 1232, Nov. 1, 1978, 92 Stat. 2350, and amended Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 354.

Sec. 1234e. Cease and desist orders

ISSUANCE AND CONTENTS OF COMPLAINT

(a) In accordance with section 1234c of this title, the Secretary may issue to a recipient under an applicable program a complaint which—

(1) describes the factual and legal basis for the Secretary's belief that the recipient is failing to comply substantially with a requirement of law; and

(2) contains a notice of a hearing to be held before the Office on a date at least 30 days after the service of the complaint.

APPEARANCE CONTESTING ORDER

(b) The recipient upon which a complaint has been served shall have the right to appear before the Office on the date specified and to show cause why an order should not be entered by the Office requiring the recipient to cease and desist from the violation of law charged in the complaint.

REPORT; ISSUANCE OF CEASE AND DESIST ORDER

(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Office. If upon that hearing the Office is of the opinion that the recipient is in violation of any requirement of law as charged in the complaint, the Office shall—

(1) make a report in writing stating its findings of fact; and

(2) issue to the recipient an order requiring the recipient to cease and desist from the practice, policy, or procedure which resulted in the violation.

REPORT AND ORDER AS FINAL AGENCY ACTION

(d) The report and order of the Office under this section shall become the final agency action when the recipient receives the report and order.

ENFORCEMENT OF FINAL ORDER

(e) The Secretary may enforce a final order of the Office under this section which becomes final agency action by—

(1) withholding from the recipient any portion of the amount payable to it, including the amount payable for administrative costs, under the applicable program; or

(2) certifying the facts to the Attorney General who shall cause an appropriate proceeding to be brought for the enforcement of the order.

Pub. L. 90-247, Title IV, Sec. 456, as added Pub. L. 95-561, Title XII, Sec. 1232, Nov. 1, 1978, 92 Stat. 2351, and amended Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 355.

Sec. 1234f. Compliance agreements

DISCRETIONARY AUTHORITY; PURPOSES OF AGREEMENT

(a) In accordance with section 1234c of this title, the Secretary may enter into a compliance agreement with a recipient under an applicable program. The purpose of any compliance agreement under this section shall be to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.

PROCEDURES APPLICABLE

(b)(1) Before entering into a compliance agreement with a recipient, the Secretary shall hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. The recipient shall have the burden of persuading the Secretary that full compliance with the applicable requirements of law is not feasible until a future date.

(2) If the Secretary determines, on the basis of all the evidence presented, that full compliance is genuinely not feasi-

ble until a future date, the Secretary shall make written findings to that effect and shall publish those findings, along with the substance of any compliance agreement, in the Federal Register.

CONTENTS

(c) A compliance agreement under this section shall contain—

(1) an expiration date not later than 3 years from the date of the written findings under subsection (b)(2) of this section, by which the recipient shall be in full compliance with the applicable requirements of law, and

(2) those terms and conditions with which the recipient must comply until it is in full compliance.

FAILURE OF RECIPIENT TO COMPLY WITH TERMS AND CONDITIONS

(d) If a recipient fails to comply with the terms and conditions of a compliance agreement under this section, the Secretary may consider that compliance agreement to be no longer in effect, and the Secretary may take any action authorized by law with respect to the recipient.

Pub. L. 90-247, Title IV, Sec. 457, as added Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 355.

Sec. 1234g. Judicial review

RECIPIENTS ENTITLED TO REVIEW; STAY OF ACTION BY SECRETARY

(a) Any recipient of funds under an applicable program that would be adversely affected by a final agency action, under section 1234a, 1234d, or 1234e of this title, and any State entitled to receive funds under a program described in section 1232d(a) of this title whose application has been disapproved by the Secretary, shall be entitled to judicial review of such action in accordance with the provisions of this section. The Secretary may not take any action on the basis of a final agency action until judicial review is completed.

PETITION FOR REVIEW; FILING OF RECORD

(b) A recipient that desires judicial review of an action described in subsection (a) of this section shall, within 60 days of that action, file with the United States Court of Appeals for the circuit in which that recipient is located, a petition for review of such action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28.

FINDINGS OF FACT

(c) The findings of fact by the Office, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Office to take further evidence, and the Office may make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

SCOPE OF REVIEW; REVIEW BY SUPREME COURT

(d) The court shall have jurisdiction to affirm the action of the Office or the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

Pub. L. 90-247, Title IV, Sec. 458, as added Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 456.

Sec. 1234h. Use of recovered funds

REPAYMENT TO RECIPIENT; FACTORS CONSIDERED

(a) Whenever the Secretary recovers funds paid to a recipient under a grant or cooperative agreement made under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds if the Secretary determines that—

(1) the practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

(2) the recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

TERMS AND CONDITIONS OF REPAYMENT

(b) Any payments by the Secretary under this section shall be subject to such other terms and conditions as the Secretary considers necessary to accomplish the purposes of the affected programs, including—

(1) the submission of periodic reports on the use of funds provided under this section; and

(2) consultation by the recipient with students, parents, or representatives of the population that will benefit from the payments.

AVAILABILITY OF FUNDS

(c) Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than 3 fiscal years following the fiscal year in which final agency action under section 1234a(e) of this title is taken.

PUBLICATION IN FEDERAL REGISTER OF NOTICE OF INTENT TO ENTER INTO REPAYMENT ARRANGEMENT

(d) At least 30 days prior to entering into an arrangement under this section, the Secretary shall publish in the Federal Register a notice of intent to enter into such an arrangement and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least 30 days to submit comments to the Secretary regarding the proposed arrangement.

Pub. L. 90-247, Title IV, Sec. 459, as added Pub. L. 100-297, Title III, Sec. 3501(a), Apr. 28, 1988, 102 Stat. 356.

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[P.L. 91-230, April 13, 1970, 84 Stat. 121; as amended by P.L. 93-380, August 21, 1974, 88 Stat. 580, by P.L. 94-1142, November 29, 1975, 89 Stat. 773, by Pub. L. 95-561, November 1, 1978, 92 Stat. 2364, by Pub. L. 98-199, December 2, 1983, 97 Stat. 1357, by Pub. L. 99-372, August 5, 1986, 100 Stat. 796, by Pub. L. 99-457, Oct. 8, 1986, 100 Stat. 1145, and by Pub. L. 100-630, Nov. 7, 1988, 102 Stat. 3289.]

Part A—General Provisions

Sec. 1400. Congressional statements and declarations

SHORT TITLE

(a) This chapter may be cited as the "Education of the Handicapped Act."

FINDINGS

(b) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the National interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

PURPOSE

(c) It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in Section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

Pub. L. 91-230, Title VI, Sec. 601, Apr. 13, 1970, 84 Stat. 175, amended by Pub. L. 94-142, Sec. 3(a), Nov. 29, 1975, 89 Stat. 774 [reclassified as Sec. 1400 in 1981].

Sec. 1401. Definitions

(a) As used in this chapter—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

* Former subsection (a)(2) was deleted; however, subsections (a)(3)-(a)(22) were not renumbered.

(4) The term "construction," except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this chapter; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, pub-

lished, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

(F) The term includes community colleges receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

(18) The term "free appropriate public education" means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5) of this title.

(19) The term "individualized education program" means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(20) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received (i) under this part, (ii) under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, or (iii) under title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs which would qualify for assistance under such part, subchapter or under such titles.

(21) The term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act.

(22) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.

(23) (A) The term "public or private nonprofit agency or organization" includes an Indian tribe. (B) The terms "Indian," "American Indian," and "Indian American" mean an individual who is a member of an Indian tribe. (C) The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

(b) For purposes of part C of this title, "handicapped youth" means any handicapped child (as defined in subsection (a)(1)) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

Note: (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of enactment of this Act.

(b)(1) To the extent that the amendments made by this Act to parts C, D, E, and G of the Education of the Handicapped Act prohibit or limit the use of funds, such amendments shall apply only to funds obligated after the date of enactment of this Act.

(2) As determined necessary by the Secretary of Education for purposes of providing services under the Education of the Handicapped Act pending the issuance of regulations implementing the amendments made by this Act, the Secretary shall provide financial assistance under parts C, D, E, and G of the Act as in effect on the day before the date of enactment of this Act until issuance of such regulations or March 1, 1984, whichever is earlier.

Pub. L. 91-230, Title VI, Sec. 602, Apr. 13, 1970, 84 Stat. 175; amended by Pub. L. 94-142, Sec. 4(a), Nov. 29, 1975, 89 Stat. 775, Pub. L. 98-199, Sec. 2, Dec. 2, 1983, 97 Stat. 1357, and by Pub. L. 99-457, Title IV, Sec. 402, Oct. 8, 1986, 100 Stat. 1172.

Sec. 1402. Office of Special Education Programs

(a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of the handicapped.

(b)(1) The office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS-18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3182(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of the Associate Deputy Assistant Secretary. Each such position shall be in grade GS-15 of the General Schedule under section 5104 of title 5, United States Code.

Pub. L. 91-230, Title VI, Sec. 603, Apr. 13, 1970, 84 Stat. 177; amended by Pub. L. 93-380, Title VI, Sec. 612(a), Aug. 21, 1974, 88 Stat. 579, and by Pub. L. 98-199, Sec. 3(a), Dec. 2, 1983, 97 Stat. 1357.

Sec. 1403. National Advisory Committee on Handicapped Children and Youth

Repealed by Pub. L. 99-457, Title IV, Sec. 407, Oct. 8, 1986, 100 Stat. 1177.

Sec. 1404. Acquisition of equipment and construction of necessary facilities

AUTHORIZATION FOR USE OF FUNDS

(a) In the case of any program authorized by this chapter, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, the Secretary may authorize the use of such funds for such purposes.

RECOVERY OF PAYMENTS UNDER CERTAIN CONDITIONS

(b) If, within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this chapter the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

Pub. L. 91-230, Title VI, Sec. 605, Apr. 13, 1970, 84 Stat. 177.

Sec. 1405. Employment of handicapped individuals

The Secretary shall assure that each recipient of assistance under this chapter shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this chapter.

Pub. L. 91-230, Title VI, Sec. 606, as added Pub. L. 94-142, Sec. 6(a), Nov. 29, 1975, 89 Stat. 795.

Sec. 1406. Grants for the removal of architectural barriers

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with the Secretary of the Interior and with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act entitled 'An Act to insure that certain buildings financed with Federal funds are so designated and constructed as to be accessible to the physically handicapped,' approved August 12, 1968.

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

Pub. L. 91-230, Title VI, Sec. 607, as added by Pub. L. 94-142, Sec. 6(a), Nov. 29, 1975, 89 Stat. 795, and amended by Pub. L. 98-199, Sec. 5, Dec. 2, 1983, 97 Stat. 1358, and by Pub. L. 99-457, Title IV, Sec. 401, Oct. 8, 1986, 100 Stat. 1172.

Sec. 1407. Requirements for prescribing regulations

(a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to handicapped children under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

Pub. L. 91-230, Title VI, Sec. 608, as added by Pub. L. 98-199, Sec. 6, Dec. 2, 1983, 97 Stat. 1359.

Sec. 1408. Eligibility for Financial Assistance

Effective for fiscal years for which the Secretary may make grants under section 1419(b)(1), no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under parts C through G which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 1419(b)(1).<
Pub. L. 99-457, Title II, Sec. 202, Oct. 8, 1986, 100 Stat. 1158.

Part B—Assistance For Education Of All Handicapped Children

Sec. 1411. Entitlements and allocations

FORMULA FOR DETERMINING MAXIMUM STATE ENTITLEMENT

(a)(1) Except as provided in paragraph (3) and in section 1419 of this title, the maximum amount of the grant to which a State is entitled under this subchapter for any fiscal year shall be equal to—

(A) the number of handicapped children aged three to five, inclusive, in a State who are receiving special education and related services as determined under paragraph (3) if the State is eligible for a grant under section 1419 and the number of handicapped children aged six through 21, inclusive, in a State who are receiving special education and related services as so determined;

multiplied by—

(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this subchapter for the fiscal year ending September 30, 1977.

(2) For the purposes of this subsection and subsection (b) through subsection (e) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

(4) For purposes of paragraph (1)(B), the term "average per pupil expenditure," in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures is made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

(i) handicapped children aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per cent of the number of all children aged five to seventeen, inclusive, in such State and the State serves all handicapped children aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court,

(ii) handicapped children aged five to seventeen, inclusive, in such state under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State and the State does not serve all handicapped children aged three to five, inclusive, in the State pursuant to State law or practice on the order of any court; and

(iii) handicapped children who are counted under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(B) For purposes of subparagraph (A), the number of children aged three to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

DISTRIBUTION AND USE OF GRANT FUNDS BY STATES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1978

(b)(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1978—

(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 1412(3) of this title.

(2) Of the funds which any State may use under paragraph (1)(A)—

(A) an amount which is equal to the greater of—

(i) 5 per centum of the total amount of funds received under this subchapter by such State; or

(ii) $200,000

may be used by such State for administrative costs related to carrying out sections 1412 and 1413 of this title;

(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 1412(3) of this title.

DISTRIBUTION AND USE OF GRANT FUNDS BY STATES FOR FISCAL YEARS ENDING SEPTEMBER 30, 1979, AND THEREAFTER

(c)(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) except as provided in paragraph (4), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 1412(3) of this title.

(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

(i) an amount which is equal to the greater of—

(I) 5 per centum of the total amount of funds received under this subchapter by such State; or

(II) $350,000

may be used by such State for administrative costs related to carrying out the provisions of sections 1412 and 1413 of this title; and

(ii) the part remaining after use in accordance with clause (i) shall be used by the State (I) to provide support services and direct services in accordance with the priorities established under section 1412(3), and (II) for the administrative costs of monitoring and complaint investigation but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.

(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

(3) The provisions of section 1413(a)(9) of this title shall not apply with respect to amounts available for use by any State under paragraph 2.

(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

(i) such local educational agency or intermediate educational unit is entitled, under subsection (d) of this section, to less than $7,500 for such fiscal year; or

(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 1414 of this title.

(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

ALLOCATION OF FUNDS WITHIN STATES TO LOCAL EDUCATIONAL AGENCIES AND INTERMEDIATE EDUCATIONAL UNITS

(d) From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, each local educational agency and intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this subchapter.

TERRITORIES AND POSSESSIONS

(e)(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate amounts available to all States under this subchapter for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of such jurisdictions shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

INDIAN RESERVATIONS

(f)(1) The Secretary may make payments to the Secretary of the Interior according to the need for assistance for the education of handicapped children on reservations served by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1.25 percent of the aggregate amounts available to all States under this subchapter for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which—

(A) meets the applicable requirements of sections 1412, 1413, and 1414(a),

(B) includes satisfactory assurance that all handicapped children aged 3 to 5, inclusive, receive a free appropriate public education by or before the 1987-1988 school year,

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and designated local school boards before adoption of the policies, programs, and procedures required under sections 1412, 1413, and 1414(a), and

(D) is approved by the Secretary.

Section 1416 shall apply to any such application.

REDUCTIONS OR INCREASES

(g)(1) If the sums appropriated under subsection (h) for any fiscal year for making payments to States under subsection (a) are not sufficient to pay in full the total amounts which all States are entitled to receive under subsection (a) for such fiscal year, the maximum amounts which all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d) of this section, which it estimates that it will expend in accordance with the provisions of this section. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this subchapter, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies and intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary.

Pub. L. 91-230, Title VI, Sec. 611, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 93-380, Title VI, Secs. 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, Secs. 2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 96-270, Sec. 13, June 14, 1980; Pub. L. 98-199, Sec. 15, Dec. 2, 1983, 97 Stat. 1357; and by Pub. L. 99-457, Title II, Sec. 201, and Title IV, Secs. 403, 404, Oct. 8, 1986, 100 Stat. 1155 and 1173.

Sec. 1412. Eligibility requirements

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to November 29, 1975, and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 1417(c) of this title; and

(E) any amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 1414(a)(5) of this title.

(5) The State has established (A) procedural safeguards as required by section 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or

other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided handicapped children in the State.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 1413 of this title.

Pub. L. 91-230, Title VI, Sec. 612, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 92-318, Title IV, Sec. 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, Title Secs. 614(b), (f)(1), 615(a), Title VIII, Sec. 843(b), Aug. 21, VI, 1974, 88 Stat. 581, 582, 611; Pub. L. 94-142, Secs. 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; and by Pub. L. 99-457, Title II, Sec. 203, Oct. 8, 1986, 100 Stat. 1158.

Sec. 1413. State Plans

REQUISITE FEATURES

(a) Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this subchapter will be expended in accordance with the provisions of this subchapter, with particular attention given to the provisions of sections 1411(b), 1411(c), 1411(d), 1412(2) and 1412(3) of this title;

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 241c-1 of this title, section 844a(b)(8) of this title or its successor authority, and section 1262(a)(4)(B) of this title, under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) set forth, consistent with the purposes of this chapter, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include (i) in-service training of general and special educational instructional and support personnel, (ii) detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and (iii) effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services; and

(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this subchapter for services to any child who is determined to be erroneously classified as eligible to be counted under section 1411(a) or 1411(d) of this title;

(6) provide satisfactory assurance that the control of funds provided under this subchapter, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to handicapped children under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this subparagraph if the Secretary concurs with the evidence provided by the State;

(10) provide consistent with procedures prescribed pursuant to section 1417(a)(2) of this title, satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 1417 of this title;

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of the responsibilities of the Secretary under section 1418 of this title;

(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to (A) define the financial responsibility of each agency for providing handicapped children and youth with free appropriate public education, and (B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of this agreement; and;

(14) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this subchapter are appropriately and adequately prepared and trained including—

(A) set forth the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

ADDITIONAL ASSURANCES

(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) of this section as are contained in section 1414(a) of this title, except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 1414(a) of this title.

NOTICE AND HEARING PRIOR TO DISAPPROVAL OF PLAN

(c)(1) The Secretary shall approve any State plan and any modification thereof which—

(A) is submitted by a State eligible in accordance with section 1412 of this title; and

(B) meets the requirements of subsection (a) and subsection (b) of this section.

(2) The Secretary shall disapprove any State plan which does not meet the requirements of the paragraph (1), but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

PARTICIPATION OF HANDICAPPED CHILDREN IN PRIVATE SCHOOLS

(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of handicapped children enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this part to all handicapped children enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4).

(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

PROHIBITION ON REDUCTION OF ASSISTANCE

(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for handicapped children within the State.

Pub. L. 91-230, Title VI, Sec. 613, Apr. 13, 1970, 83 Stat. 179; amended by Pub. L. 93-380, Title VI, Secs. 614(c), (d), 615(b), (c), Title VIII, Sec. 843(b)(2), Aug. 21, 1974, 88 Stat. 581, 583, 611; Pub. L. 94-142, Secs. 2(b)(3), 5(a), Nov. 29, 1975, 89 Stat. 774, 782; Pub. L. 98-199, Sec. 7, Dec. 2, 1983, 97 Stat. 1359; and by Pub. L. 99-457, Title II, Sec. 203, and Title IV, Sec. 405, Oct. 8, 1986, 100 Stat. 1158 and 1174.

Sec. 1414. Application

REQUISITE FEATURES

(a) A local educational agency or an intermediate educational unit which desires to receive payments under section 1411(d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

(1) provide satisfactory assurance that payments under this subchapter will be used for excess costs directly attributable to programs which—

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

(B) establish policies and procedures in accordance with detailed criteria prescribed under section 1417(c) of this title;

(C) establish a goal of providing full educational opportunities to all handicapped children, including—

(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 1413(a)(3) of this title;

(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

(iii) the participation and consultation of the parents or guardian of such children; and

(iv) to the maximum extent practicable and consistent with the provisions of section 1412(5)(B) of this title, the provision of special services to enable such children to participate in regular educational programs;

(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

(2) provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property; (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds; and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas that, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part;

(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives) as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

(B) keeping such records, and affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subparagraph (A);

(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provision of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title; and

(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 1412(5)(B), 1412(5)(C), and 1415 of this title.

APPROVAL BY STATE EDUCATIONAL AGENCIES OF APPLICATIONS SUBMITTED BY LOCAL EDUCATIONAL AGENCIES OR INTERMEDIATE EDUCATIONAL UNITS; NOTICE AND HEARING

(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application meets the requirements of subsection (a) of this section, except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) of this section is approved by the Secretary under section 1413(c) of this title. A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application does not meet the requirements of subsection (a) of this section.

(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

(i) make no further payments to such local educational agency or such intermediate educational unit under section 1420 of this title until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a) of this section.

(B) The provisions of the last sentence of section 1416(a) of this title shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 1415 of this title which is adverse to the local educational agency or intermediate educational unit involved in such decision.

CONSOLIDATED APPLICATIONS

(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 1411(c)(4)(A)(i) of this title or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 1411(d) of this title if an individual application of any such local educational agency has been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this subchapter.

(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this subchapter, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

SPECIAL EDUCATION AND RELATED SERVICES PROVIDED DIRECTLY BY STATE EDUCATIONAL AGENCIES; REGIONAL OR STATE CENTERS

(d) Whenever a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a) of this section;

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special educational and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this subchapter.

REALLOCATION OF FUNDS

(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 1411(d) of this title, to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

PROGRAMS USING STATE OR LOCAL FUNDS

(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii) of this section, any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 1411(d) of this title for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

Pub. L. 91-230, Title VI, Sec. 614, Apr. 13, 1970, 84 Stat. 181; amended by Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 784.

Sec. 1415. Procedural safeguards

ESTABLISHMENT AND MAINTENANCE

(a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

REQUIRED PROCEDURES; HEARING

(b)(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, available, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

REVIEW OF LOCAL DECISION BY STATE EDUCATIONAL AGENCY

(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

ENUMERATION OF RIGHTS ACCORDED PARTIES TO HEARINGS

(d) Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 1417(c) and shall also be transmitted to the advisory panel established pursuant to section 1413(a)(12) of this title).

CIVIL ACTION; JURISDICTION

(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4)(A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party.

(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian if—

(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) the offer is not accepted within ten days; and

(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Whenever the court finds that—

(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 1415 of this Act.

(f) Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of handicapped children and youth, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (b)(2) and (c) shall be exhausted to the same extent as would be required had the action been brought under this part.

Pub. L. 91-230, Title VI, Sec. 615, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 788, and amended by Pub. L. 99-372 Secs. 2 and 3, Aug. 5, 1986, 100 Stat. 796.

Sec. 1416. Withholding of payments; judicial review

(a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 1412 or section 1413 of this title, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this subchapter or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Secretary (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 1413(a)(2) within the Secretary's jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Secretary withholds further payments under clause (A) or clause (B) the Secretary may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this subchapter to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this subchapter, as specified in clause (1) or clause (2), no further payments shall be made to the State under this subchapter or under the Federal programs specified in section 1413(a)(2) of this title within the Secretary's jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this subchapter shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 1413 of this title, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be

subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

Pub. L. 91-230 Title VI, Sec. 616, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 789.

Sec. 1417. Administration

DUTIES OF SECRETARY

(a)(1) In carrying out the Secretary's duties under this subchapter, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this subchapter;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) assure that each State shall, within one year after November 29, 1975, and every year thereafter, provide certification of the actual number of handicapped children receiving special education and related services in such State.

(2) As soon as practicable after November 29, 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this subchapter in order to assure equity among the States.

RULES AND REGULATIONS

(b) In carrying out the provisions of this subchapter, the Secretary (and the Secretary, in carrying out the provision of subsection (c) of this section)* shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

So in original; probably should read: "In carrying out the provisions of this subchapter and of subsection (c) of this section, the Secretary shall issue,..."

PROTECTION OF RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

(c) The Secretary shall take appropriate action, in accordance with the provisions of section 1232g of this title, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this subchapter.

HIRING OF QUALIFIED PERSONNEL

(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 1418 of this title and to carry out the Secretary's duties under subsection (a)(1) of this section without regard to the provisions of title 5 relating to appointments in the competitive service and without regard to chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

Pub. L. 91-230, Title VI, Sec 617, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 791.

Sec. 1418. Evaluation

(a) The Secretary shall, directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

(1) to assess progress in the implementation of this Act;

(2) to assess the impact, and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide (A) free appropriate public education to handicapped children and youth and (B) early intervention services to handicapped infants and toddlers, and

(3) to provide—

(A) Congress with information relevant to policymaking, and

(B) State, local, and Federal agencies including the Department of Interior with information relevant to program management, administration, and effectiveness with respect to such education and early intervention services.

(b) In carrying out subsection (a), the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to handicapped infants, toddlers, children, and youth, and such additional information, from State and local educational agencies, the Secretary of Interior, and other appropriate sources, as is necessary for the implementation of this Act including—

(1) the number of handicapped infants, toddlers, children and youth in each State receiving a free appropriate public education or early intervention services—(A) in age groups 0-2 and 3-5, and (B) in age groups 6-11, 12-17, and 18-21 by disability category,

(2) the number of handicapped children and youth in each State who are participating in regular educational programs (consistent with the requirements of sections 1412(5)(B) and 1414(a)(1)(C)(iv)) by disability category, and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who have been otherwise removed from the regular education environment,

(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise—(A) in age group 3-5, and (B) in age groups 6-11, 12-17, and 18-21 by disability category and anticipated services for the next year,

(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related services and for early intervention services (which may be based upon a sampling of data from State agencies including State and local educational agencies),

(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth and early intervention services to handicapped infants and toddlers by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this Act, and

(6) a description of the special education and related services and early intervention services needed to fully implement this Act throughout each State, including estimates of the number of handicapped infants and toddlers in the 0-2 age group and estimates of the number of handicapped children and youth—(A) in age group 3-5 and (B) in age groups 6-11, 12-17, and 18-21 and by disability category.

(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

(d)(1) The Secretary may enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs assisted under this Act.

(2) An agreement under paragraph (1) shall—

(A) provide for the payment of not to exceed 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of programs assisted under this Act, and

(B) be developed in consultation with the State Advisory Panel established under this Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

(4) In addition, the Secretary shall disseminate information from such studies to State agencies, regional resources centers, and clearinghouses established by this Act, and, as appropriate, to others involved in, or concerned with, the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

(e)(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

(2) At least one study shall focus on obtaining and compiling current information available, through State educational agencies and local educational agencies and other service providers, regarding State and local expenditures for educational services for handicapped students (including special education and related services) and shall gather information needed in order to calculate a range of per pupil expenditures by handicapping condition.

(f)(1) Not later than 120 days after the close of each fiscal year, the Secretary shall publish and disseminate an annual report on the progress being made toward the provision of a free appropriate public education to all handicapped children and youth and early intervention services for handicapped infants and toddlers. The annual report shall be transmitted to the appropriate committees of each House of Congress and published and disseminated in sufficient quantities to the education community at large and to other interested parties.

(2) The Secretary shall include in each annual report under paragraph (1)—

(A) a compilation and analysis of data gathered under subsection (b),

(B) an index and summary of each evaluation activity and results of studies conducted under subsection (c),

(C) a description of findings and determinations resulting from monitoring reviews of state implementation of part B of this Act,

(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services,

(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities, and

(F) any recommendation for change in the provisions of this Act or any other Federal law providing support for the education of handicapped children and youth.

(3) In the annual report under paragraph (1) for fiscal year 1985 which is published in 1986 and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under parts C through G of this title, and

(B) data reported under sections 1421, 1422, 1423, 1427, 1434, 1441, and 1461.

(4) In the annual report under paragraph (1) for fiscal year 1988 which is published in 1989, the Secretary shall include special sections addressing the provision of a free appropriate public education to—(A) handicapped infants, toddlers, children and youth in rural areas, (B) handicapped migrants, (C) handicapped Indians (particularly programs operated under section 1411(f)), (D) handicapped Native Hawaiian, and other native Pacific basin children and youth, and (E) handicapped infants, toddlers, children and youth with limited English proficiency.

(5) Beginning in 1986, in consultation with the National Council on Disability and the Bureau of Indian Affairs Advi-

sory Committee for Exceptional Children, the Secretary shall include a description of the status of early intervention services for handicapped infants and toddlers from birth through age two, inclusive, and special education and related services to handicapped children from 3 through 5 years of age (including those receiving services through Head Start, Developmental Disabilities Programs, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

(g) There are authorized to be appropriated $3,800,000 for fiscal year 1987, $4,000,000 for fiscal year 1988, and $4,200,000 for fiscal year 1989 to carry out this section.

Pub. L. 91-230, Title VI, Sec. 618, as added by Pub. L. 94-142, Sec. 5(a), Nov. 29, 1985, 89 Stat. 791, and amended by Pub. L. 98-199, Sec. 8, Dec. 2, 1983, 97 Stat. 1360, and by Pub. L. 99-457, Title IV, Sec. 406, Oct. 8, 1986, 100 Stat. 1174.

Sec. 1419. Preschool grants

(a)(1) For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

(A) has met the eligibility requirements of section 1412,

(B) has a State plan approved under section 1413, and

(C) provides special education and related services to handicapped children aged three to five, inclusive.

(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

(i) $300 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 1411(a)(3), or

(ii) if the amount appropriated under subsection (e) exceeds the product of $300 and the total number of handicapped children aged three to five, inclusive, who received special education and related services as determined under section 1411(a)(3)—

(I) $300 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 1411(a)(3), plus

(II) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of handicapped children aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated increase in the number of such children in such State.

(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $400 instead of $300.

(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $500 instead of $300.

(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed $1,000 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 1411(a)(3).

(E) If the actual number of additional children served in a fiscal year differs from the estimate made under subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed $3,800 per estimated handicapped child aged three to five, inclusive, who will be receiving or handicapped child, age three to five, inclusive, who is receiving special education and related services in such State.

(ii) If the amount appropriated under subsection (e) for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b)(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

(A) has met the eligibility requirements of section 1412, and

(B) has a State plan approved under section 1413 which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all handicapped children aged three to five, inclusive.

(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—

(A) the aggregate amount that was appropriated under subsection (e) for fiscal years 1987, 1988, and 1989 was less than $656,000,000, and

(B) the amount appropriated for fiscal year 1990 under subsection (e) is less than $306,000,000,

the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) for fiscal year 1990.

(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed $1,000 for each handicapped child in such State aged three to five, inclusive.

(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c)(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) shall—

(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only handicapped children aged three to five, inclusive, shall be considered,

(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 1423(b) in effect through fiscal year 1987 and for direct and support services for handicapped children, and

(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) shall—

(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only handicapped children aged three to five, inclusive, shall be considered,

(B) use not more than 20 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 1423(b) in effect through fiscal year 1987 and for direct and support services for handicapped children, and

(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

(A) an amount which bears the same ratio to the amount of such funds or subsection (a)(2)(A)(ii)(I), as the case may be, as the number of handicapped children aged three to five, inclusive, who received special education and related services as determined under section 1411(a)(3) in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II), an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(ii)(II) as the estimated number of additional handicapped children aged three to five, inclusive, who will be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of such children in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

(d) If the sums appropriated under subsection (e) for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II). If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

(e) For grants under subsections (a)(1) and (b)(1) there are authorized to be appropriated such sums as may be necessary.

(f) Notwithstanding any other provision of law, unless enacted in express limitation of this subsection, amounts appropriated under this section for fiscal years 1987 and 1988 and received by a State whose allotment for the succeeding fiscal year is adjusted downwards under subsection (a)(2)(E) shall remain available for obligation by such State, and by local educational agencies and intermediate educational units in such State during the 2 fiscal years succeeding the fiscal year for which such amounts were appropriated.

Pub. L. 91-230, Title VI, Sec. 619, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 793, and amended by Pub. L. 98-199, Sec. 9, Dec. 2, 1983, 97 Stat. 1363, and by Pub. L. 99-457, Title II, Sec. 201, Oct. 8, 1986, 100 Stat. 1155.

Sec. 1420. Payments

(a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this subchapter. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this subchapter after the State educational agency has approved applications of such agencies or units for payments in accordance with section 1414(b) of this title.

(b) Payments under this subchapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

Pub. L. 91-230, Title VI, Sec. 620, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 793.

Part C—Centers And Services To Meet Special Needs Of Handicapped Individuals

Sec. 1421. Regional resource and federal centers

(a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers. Each regional resource center shall provide consultation, technical assistance, and training to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate public agencies providing early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center and the findings of the Secretary in monitoring reports prepared by the Secretary under section 1417 of the Act. Each regional resource center established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth and early intervention services to handicapped infants and toddlers and their families,

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families and early intervention services to handicapped infants and toddlers and their families,

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant projects conducted by the Department of Education,

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped infants, toddlers, children, and youth, and

(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this subchapter and subchapters D through G.

(b) In determining whether to approve an application for a project under subsection (a), the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

(c) Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 1418.

(d) The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of technical assistance, consistent with such national priorities.

(e) Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d), not less than the amount made available in the previous fiscal year for regional resource centers under subsection (a) shall be made available for such centers and in no case shall more than $500,000 be made available for the center under subsection (d).

Pub. L. 91-230, Title VI, Sec. 621, Apr. 13, 1970, 84 Stat. 181; amended by Pub. L. 98-199, Secs. 621, Dec. 2, 1983, 97 Stat. 1357, Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1363, and by Pub. L. 99-457, Title III, Sec. 301, Oct. 8, 1986, 100 Stat. 1159.

Sec. 1422. Services for deaf-blind children and youth

(a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies to—

(A) assure deaf-blind children and youth provision of special education and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth, upon attaining the age of twenty-two, programs and services to facilitate their transition from educational to other services.

(2) A grant, cooperative agreement, or contract pursuant to paragraph (1)(A) may be made only for programs providing (A) technical assistance to agencies, institutions, or organizations providing educational services to deaf-blind children or youth; (B) pre-service or in-service training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind children or youth; (C) implication of successful innovative approaches to providing educational or related services to deaf-blind children and youth; and (D) facilitation of parental involvement in the education of their deaf-blind children and youth. Such programs may include—

(i) the diagnosis and educational evaluation of children and youth at risk of being certified deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind children and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind children and youth.

(3) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations serving, or proposing to serve, deaf-blind individuals who have attained age twenty-two years; (B) training or in-service training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, semisupervised, or independent living programs.

(4) In carrying out this subsection, the Secretary shall take into consideration the need for a center for deaf-blind children and youth in light of the general availability and quality of existing services for such children and youth in the part of the country involved.

(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity, and (C) the types of services provided.

(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 1418.

(d) The Secretary shall disseminate materials and information concerning effective practices in working with deaf-blind children and youth.

(e) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for severely handicapped children and youth, including deaf-blind children and youth.

(f) The Secretary may make grants to, or enter into contracts or cooperative agreements with, the entities under section 1424(a) for the purposes in such section.

Pub. L. 91-230, Title VI, Sec. 622, Apr. 13, 1970, 84 Stat. 182; amended by Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1364, and by Pub. L. 99-457, Title III, Sec. 302, Oct. 8, 1986, 100 Stat. 1160.

Sec. 1423. Early education for handicapped children

(a)(1) The Secretary may arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall include activities and services designed to—

(A) facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of such children,

(B) encourage the participation of the parents of such children in the development and operation of any such program,

(C) acquaint the community to be served by any such program with the problems and potentialities of such children,

(D) offer training about exemplary models and practices to State and local personnel who provide services to handicapped children from birth through 8, and

(E) support the adoption of exemplary models and practices in States and local communities.

(2) Programs authorized by paragraph (1) shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served and with similar programs operated by other public agencies in such community.

(3) As much as is feasible, programs assisted under paragraph (1) shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4)(A) Except as provided in subparagraph (B), no arrangement under paragraph (1) shall provide for the payment of more than 90 percent of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(B) The Secretary may waive the requirement of subparagraph (A) in the case of an arrangement entered into under paragraph (1) with governing bodies of Indian tribes located on Federal or State reservations and with consortia of such bodies.

(b) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to handicapped children.

(c) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of early childhood research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for handicapped children and their families.

(d) The Secretary may make grants to, or enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of handicapped children and for training of personnel for programs specifically designed for handicapped children.

(e) At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (b) and (c), the Secretary shall publish in the Federal Register a notice of intent to accept applications for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

(f) For purposes of this section the term "handicapped children" includes children from birth through eight years of age.

Pub. L. 91-230, Title VI, Sec. 623, Apr. 13, 1970, 84 Stat. 183; amended by Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1365, and by Pub. L. 99-457, Title III, Sec. 303, Oct. 8, 1986, 100 Stat. 1161.

Sec. 1424. Programs for severely handicapped children

(a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, such organizations or institutions, as are determined by the Secretary to be appropriate, to address the needs of severely handicapped children and youth, for—

(1) research to identify and meet the full range of special needs of such handicapped children and youth,

(2) the development or demonstration of new, or improvements in existing methods, approaches, or techniques which would contribute to the adjustment and education of such handicapped children and youth,

(3) training of personnel for programs specifically designed for such children and youth, and

(4) dissemination of materials and information about practices found effective in working with such children and youth.

(b) In making grants and entering into contracts and cooperative agreements under subsection (a), the Secretary shall ensure that the activities funded under such grants, contracts, or cooperative agreements will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

(c) To the extent feasible, programs authorized by subsection (a) shall be geographically dispersed throughout the Nation in urban and rural areas.

Pub. L. 91-230, Title VI, Sec. 624, Apr. 13, 1970, 84 Stat. 183; amended by Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1366, and by Pub. L. 99-457, Title III, Sec. 304, Oct. 8, 1986, 100 Stat. 1162.

Sec. 1424a. Postsecondary education

(a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals, and

(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

(3) Persons operating programs for handicapped persons under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 1433(b).

(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept applications for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

(6) Of the sums made available for programs under paragraph (1), not less than $2,000,000 shall first be available for the 4 regional centers for the deaf.

(b) For the purposes of subsection (a) the term "handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

Pub. L. 91-230, Title VI, Sec. 625, as added Pub. L. 93-380, Title VI, Sec. 616, Aug. 21, 1974, 88 Stat. 584; amended by Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1367, and by Pub. L. 99-457 Title III, Sec. 305, Oct. 8, 1986, 100 Stat. 1162.

Sec. 1425. Secondary education and transitional services for handicapped youth

(a) The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act) to—

(1) strengthen and coordinate special education and related services for handicapped youth currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, or adult services,

(2) stimulate the improvement and development of programs for secondary special education, and

(3) stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

To the extent feasible, such programs shall be geographically dispersed throughout the Nation in urban and rural areas.

(b) Projects assisted under subsection (a) may include—

(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education, and competitive employment (including supported employment) for handicapped youth,

(2) establishing demonstration models for services, programs, and individualized education programs, which emphasize vocational training, transitional services, and placement for handicapped youth,

(3) conducting demographic studies which provide information on the numbers, age levels, types of handicapping conditions, and services required for handicapped youth in need of transitional programs,

(4) specially designed vocational programs to increase the potential for competitive employment for handicapped youth,

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models,

(6) initiating cooperative models among educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment, and employers, which facilitate the planning and developing of transitional services for handicapped youth to postsecondary education, vocational training, employment, continuing education, and adult services,

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for handicapped youth,

(8) conducting studies which provide information on the numbers, age levels, types of handicapping conditions and reasons why handicapped youth drop out of school, and

(9) developing special education curriculum and instructional techniques that will improve handicapped students' acquisition of the skills necessary for transition to adult life and services, and

(10) specially designed physical education and therapeutic recreation programs to increase the potential of handicapped youths for community participation.

(c) For purposes of paragraphs (1) and (2) of subsection (b), if an applicant is not an educational agency, such applicant shall coordinate its activities with the State educational agency.

(d) Applications for assistance under subsection (a) other than for the purpose of conducting studies or evaluations shall—

(1) describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations,

(2) describe the procedures that will be used for coordinating services among agencies for which handicapped youth are or will be eligible, and

(3) to the extent appropriate, provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

(e) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of handicapped children and youth and the dissemination of materials and information concerning practices found effective in working with such children and youth.

(f) The Secretary, as appropriate, shall coordinate programs described under subsection (a) with projects developed under section 311 of the Rehabilitation Act of 1973.

Amended by Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1367, and by Pub. L. 99-457, Title II, Sec. 306, Oct. 8, 1986, 100 Stat. 1163.

Sec. 1426. Program evaluations

The Secretary shall conduct, either directly or by contract, a thorough and continuing evaluation of the effectiveness of each program assisted under this part. Results of the evaluations shall be analyzed and submitted to the appropriate committees of each House of Congress together with the annual report under section 1418.

Pub. L. 91-230, Title VI, Sec. 626, formerly Sec. 625, Apr. 13, 1970, Stat. 183, renumbered Pub. L. 93-380, Title VI, Sec. 616, Aug. 21, 1974, 88 Stat. 584, amended by Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1368.

Sec. 1427. Authorization of appropriations

(a) There are authorized to be appropriated to carry out section 1421, $6,700,000 for fiscal year 1987, $7,100,000 for fiscal year 1988, and $7,500,000 for fiscal year 1989.

(b) There are authorized to be appropriated to carry out section 1422, $15,900,000 for fiscal year 1987, $16,800,000 for fiscal year 1988, and $17,800,000 for fiscal year 1989.

(c) There are authorized to be appropriated to carry out section 1423, $24,470,000 for fiscal year 1987, $25,870,000 for fiscal year 1988, and $27,410,000 for fiscal year 1989.

(d) There are authorized to be appropriated to carry out section 1424, $5,300,000 for fiscal year 1987, $5,600,000 for fiscal year 1988, and $5,900,000 for fiscal year 1989.

(e) There are authorized to be appropriated to carry section 1424a, $5,900,000 for fiscal year 1987, $6,200,000 for fiscal year 1988, and $6,600,000 for fiscal year 1989.

(f) There are authorized to be appropriated to carry out section 1425, $7,300,000 for fiscal year 1987, $7,700,000 for fiscal year 1988, and $8,100,000 for fiscal year 1989.

Pub. L. 91-230, Title VI, Sec. 627, formerly Sec. 626, Apr. 13, 1970, 84 Stat. 184, renumbered and amended Pub. L. 93-380, Title VI, Secs. 616, 617, Aug. 21, 1974, 88 Stat. 584; amended by Pub. L. 95-49, Sec. 2, June 17, 1977, 91 Stat. 230, Pub. L. 98-199, Sec. 10, Dec. 2, 1983, 97 Stat. 1368, and by Pub. L. 99-457, Title III, Sec. 307, Oct. 8, 1986, 100 Stat. 1165.

Part D—Training Personnel For The Education Of Handicapped Individuals

Sec. 1431. Grants for personnel training

(a)(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including university affiliated programs and satellite centers participating in programs under part D of the Developmental Disabilities Assistance and Bill of Rights Act) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education and early intervention, including—

(A) special education teaching, including speech-language pathology and audiology, and adaptive physical education,

(B) related services to handicapped children and youth in educational settings,

(C) special education supervision and administration,

(D) special education research, and

(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for handicapped children.

(2)(A) The Secretary shall base the award of grants under paragraph (1) the Secretary shall base the determination of such grants on information relating to the present and projected need for the personnel to be trained based on identified State, regional, or National shortages, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards.

(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

(b) The Secretary may make grants to institutions of higher education, State agencies and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches (including the application of new technology) for the pre-service training purposes set forth in subsection (a) for regular educators, for the training of teachers to work in community and school settings with handicapped secondary school students, and for the in-service training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and personnel providing early intervention services.

(c)(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

(A) be governed by a board of directors of which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth, or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee of which a majority of the members are parents of handicapped children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under paragraph (1).

(B) serve the parents of children with the full range of handicapping conditions under such grant program; and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1).

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under paragraph (1) will—

(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas, and

(B) be targeted to parents of handicapped children in both urban and rural areas or on a State or regional basis.

(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

(A) better understand the nature and needs of the handicapping conditions of children,

(B) provide followup support for handicapped children's educational programs,

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

(D) participate in educational decisionmaking processes including the development of a handicapped child's individualized education program,

(E) obtain information about the programs, services, and resources available to handicapped children and the degree to which the programs, services, and resources are appropriate, and

(F) understand the provisions for the education of handicapped children as specified under part B of this Act.

(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

Pub. L. 91-230, Title VI, Sec. 631, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, Sec. 11, Dec. 2, 1983, 97 Stat. 1369, and by Pub. L. 99-457, Title III, Sec. 308, Oct. 8, 1986, 100 Stat. 1165.

Sec. 1432. Grants to State educational agencies and institutions for traineeships

(a) The Secretary shall make a grant of sufficient size and scope to each State educational agency for the purposes described in subsection (c) and, in any State in which the State educational agency does not apply for such a grant, to an institution of higher education within such State for such purposes.

(b) The Secretary may also make a limited number of grants to State educational agencies on a competitive basis for the purposes described in subsection (c). In any fiscal year, the Secretary may not expend for purposes of this subsection an amount that exceeds 10 percent of the amount expended for purposes of this section in the preceding fiscal year.

(c) Grants made under this section shall be for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 and under section 676(b)(8).

(d) CONTINUATION GRANTS—Notwithstanding section 632 of the Education of the Handicapped (as amended by subsection (c)), the Secretary of Education may make continuation grants for the fiscal year 1989 to institutions of higher education that received competitive grants for the fiscal year 1987.

Pub. L. 91-230, Title VI, Sec. 632, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, Sec. 11, Dec. 2, 1983, 97 Stat. 1371, and by Pub. L. 99-457, Title III, Sec. 309, Oct. 8, 1986, 100 Stat. 1168.

Sec. 1433. Clearinghouses

(a) The Secretary is authorized to make a grant to or enter into a contract with a public agency or a nonprofit private organization or institution for a national clearinghouse on the education of the handicapped and to make grants or contracts with a public agency or a nonprofit private organization or institution for other support projects which may be deemed necessary by the Secretary to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

(1) programs relating to the education of the handicapped under this Act and under other Federal laws; and

(2) participation in such programs, including referral of individuals to appropriate National, State, and local agencies and organizations for further assistance.

NATIONAL CLEARINGHOUSE ON POSTSECONDARY EDUCATION FOR HANDICAPPED; ESTABLISHMENT; STATEMENT OF PURPOSE

(b) In addition to the clearinghouse established under subsection (a), the Secretary shall make a grant or enter into a contract for a national clearinghouse on postsecondary education for handicapped individuals for the purpose of providing information on available services and programs in postsecondary education for the handicapped.

(c) The Secretary shall make a grant or enter into a contract for a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of handicapped children and youth through the following:

(1) Collection and dissemination of information on current and future National, regional, and State needs for special education and related services personnel.

(2) Dissemination of information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identification of training programs available around the country.

(4) Establishment of a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Technical assistance to institutions seeking to meet State and professionally recognized standards.

(d)(1) In awarding the grants and contracts under this section, the Secretary shall give particular attention to any demonstrated experience at the national level relevant to performance of the functions established in this section, and ability to conduct such projects, communicate with the intended consumers of information, and maintain the necessary communication with other agencies and organizations.

(2) The Secretary is authorized to make contracts will profit-making organizations under this section only when necessary for materials or media access.

Pub. L. 91-230, Title VI, Sec. 633, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, Sec. 11, Dec. 2, 1983, 97 Stat 1371, and by Pub. L. 99-457, Title III, Sec. 310, Oct. 8, 1986, 100 Stat. 1168.

Sec. 1434. Reports to Secretary

(a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training; and

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training.

(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

Pub. L. 91-230, Title VI, Sec. 634, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, Sec. 11, Dec. 2, 1983, 97 Stat. 1372.

Sec. 1435. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this part (other than section 1433) $70,400,000 for fiscal year 1987, $74,500,000 for fiscal year 1988, and $79,000,000 for fiscal year 1989. There are authorized to be appropriated to carry out section 1433, $1,200,000 for fiscal year 1987, $1,900,000 for fiscal year 1988, and $2,000,000 for fiscal year 1989.

(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 1431(a)(1).

(c) Of the funds appropriated under subsection (a) for any fiscal year, the Secretary shall reserve 10 percent for activities under section 1431(c).

Pub. L. 91-230, Title VI, Sec. 636, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 93-380, Title VI, Sec. 618, Aug. 21, 1974, 88 Stat. 584, Pub. L. 95-49, Sec. 3, June 17, 1977, 91 Stat. 230, Pub. L. 98-199, Sec. 11, Dec. 2, 1983, 97 Stat. 1372 and by Pub. L. 99-457, Title III, Sec. 311, Oct. 8, 1986, 100 Stat. 1169.

Part E—Research in Education Of Handicapped Individuals

Sec. 1441. Research and demonstration projects in education of handicapped children

(a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for handicapped infants, toddlers, children, and youth, and to conduct research, surveys, or demonstrations relating to the provision of services to handicapped infants, toddlers, children, and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions, and teaching, learning, and education-related developmental practices and services for handicaps infants, toddlers, children, and youth. Research and related activities assisted under this section shall include the following:

(1) The development of new and improved techniques and devices for teaching handicapped infants, toddlers, children, and youth.

(2) The development of curricula which meet the unique educational and developmental needs of handicapped infants, toddlers, children, and youth.

(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped infants, toddlers, children, and youth.

(4) The development of program models and exemplary practices in areas of special education and early intervention.

(5) The dissemination of information on research and related activities conducted under this part to regional resource centers and interested individuals and organizations.

(6) The development of instruments, including tests, inventories, and scales, for measuring progress of handicapped infants, toddlers, children, and youth across a number of developmental domains.

(b) In carrying out subsection (a), the Secretary shall consider the special education or early intervention experience of applicants under such subsection.

(c) The Secretary shall publish proposed research priorities in the Federal Register every 2 years, not later than July 1, and shall allow a period of 60 days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than 30 days after the close of the comment period.

(d) The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 1418. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

(e) The Secretary shall coordinate the research priorities established under subsection (c) with research priorities established by the National Institute on Disability and Rehabilitation Research and shall provide information concerning research priorities established under such subsection to the National Council on Disability, and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children.

Pub. L. 91-230, Title VI, Sec. 641, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 95-49, Sec. 4, June 17, 1977, 91 Stat. 230, Pub. L. 98-199, Sec. 12, Dec. 2, 1983, 97 Stat. 1372, and by Pub. L., 99-457, Title III, Sec. 312, Oct. 8, 1986, 100 Stat. 1169.

Sec. 1442. Research and demonstration projects in the physical education and recreation for handicapped children

The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

Pub. L. 91-230, Title VI, Sec. 642, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, Sec. 12, Dec. 2, 1983, 97 Stat. 1373.

Sec. 1443. Panels of experts

(a) The Secretary shall convene, in accordance with subsection (b), panels of experts who are competent to evaluate proposals for projects under parts C through G. The panels shall be composed of—

(1) individuals from the field of special education for handicapped individuals and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals, and

(2) handicapped individuals and parents of handicapped individuals when appropriate.

(b)(1) The Secretary shall convene panels under subsection (a) for any application which includes a total funding request exceeding $60,000 and may convene or otherwise appoint panels for applications which include funding requests that are less than such amount.

Such panels shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department and shall be provided consultant fees at such a rate.

(c) The Secretary may use funds available under part C through G to pay expenses and fees of non-Federal members under subsection (b).

Pub. L. 91-230, Title VI, Sec. 643, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, Sec. 12, Dec. 2, 1983, 97 Stat. 1373, and by Pub. L. 99-457, Title III, Sec. 313, Oct. 8, 1986, 100 Stat. 1170.

Sec. 1444. Authorization of appropriations

For purposes of carrying out this part, there are authorized to be appropriated $18,000,000 for fiscal year 1987, $19,000,000 for fiscal year 1988, and $20,100,000 for fiscal year 1989.

Pub. L. 91-230, Title VI, Sec. 644, Apr. 13, 1970, 84 Stat. 186; amended by Pub. L. 93-380, Title VI, Sec. 619, Aug. 21, 1974, 88 Stat. 585, Pub. L. 95-49, Sec. 5, June 17, 1977, 91 Stat. 231, Pub. L. 98-199, Sec. 12, Dec. 2, 1983, 97 Stat. 1374, and by Pub. L. 99-457, Title III, Sec. 314, Oct. 8, 1986, 100 Stat. 1171.

Part F—Instructional Media For Handicapped Individuals

Sec. 1451. Congressional statement of purpose

(a) The purposes of this subchapter are to promote—

(1) the general welfare of deaf individuals by (A) bringing to such individuals understanding and appreciation of those films which play such an important part in the general and cultural advancement of hearing individuals; (B) providing through these films enriched educational and cultural experiences through which deaf individuals can be brought into better touch with the realities of their environment; and (C) providing a wholesome and rewarding experience which deaf individuals may share together; and

(2) the educational advancement of handicapped persons by (A) carrying on research in the use of educational media for handicapped individuals; (B) producing and distributing educational media for the use of handicapped individuals, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of handicapped individuals; and (C) training individuals in the use of educational media for the instruction of handicapped individuals.

Pub. L. 91-230, Title VI, Sec. 651, Apr. 13, 1970, 84 Stat. 186.

Sec. 1452. Captioned films and educational media for handicapped individuals

ESTABLISHMENT OF LOAN SERVICES

(a) The Secretary shall establish a loan service of captioned films and educational media for the purpose of making such materials available, in accordance with regulations, in the United States for nonprofit purposes to handicapped individuals, parents of handicapped individuals, and other individuals directly involved in activities for the advancement of the handicapped, including for the purpose of addressing problems of illiteracy among handicapped individuals.

AUTHORITY OF SECRETARY

(b) The Secretary is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchase equipment necessary for the administration of this subchapter;

(3) provide, by grant or contract, for the captioning of films;

(4) provide, by grant or contract, for the distribution of captioned films and educational media and equipment through State schools for handicapped individuals, public libraries, and such other agencies as the Commissioner may deem appropriate to serve as local or regional centers for such distribution.

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for handicapped individuals and the training of persons in the use of such films and media, including the payment to those persons of such stipends (including allowances for travel and other expenses of such persons and their dependents) as the Secretary may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies;

(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations; and

(8) provide by grant or contract for educational media and materials for deaf individuals.

(c) The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. for the purpose of providing theatrical experiences to—

(1) enrich the lives of deaf children and adults,

(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf individuals, and

(3) promote the integration of hearing and deaf individuals through shared cultural experiences.

Pub. L. 91-230, Title VI, Sec. 652, Apr. 13, 1970, 84 Stat. 186; amended by Pub. L. 93-380, Title VI, Sec. 620(1), Aug. 21, 1974, 88 Stat. 585, Pub. L. 94-482, Title V, Sec. 501(h), Oct. 12, 1976, 90 Stat. 2237, and by Pub. L. 99-457, Title III, Sec. 315, Oct. 8, 1986, 100 Stat. 1171.

Sec. 1453. Authorization

For the purposes of carrying out this part, there are authorized to be appropriated $15,000,000 for fiscal year 1987, $15,750,000 for fiscal year 1988, and $16,540,000 for fiscal year 1989.

Pub. L. 91-230, Title VI, Sec. 654, Apr. 13, 1970, 84 Stat. 187; amended by Pub. L. 93-380, Title VI, Sec. 620(2), Aug. 21, 1974, 88 Stat. 585, Pub. L. 95-49, Sec. 6, June 17, 1977, 91 Stat. 231, Pub. L. 98-199, Sec. 13, Dec. 2, 1983, 97 Stat. 1374, and by Pub. L. 99-457, Title III, Sec. 316, Oct. 8, 1986, 100 Stat. 1171.

Part G—Technology Educational Media, And Materials For Handicapped Individuals

Sec. 1461. Financial assistance

The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of handicapped students and the provision of early intervention to handicapped infants and toddlers. In carrying out this section, the Secretary may fund projects or centers for the purposes of—

(1) determining how technology, media, and materials are being used in the education of handicapped individuals and how they can be used more effectively,

(2) designing and adapting new technology, media, and materials to improve the education of handicapped students,

(3) assisting the public and private sectors in the development and marketing of new technology, media, and materials for the education of handicapped individuals, and

(4) disseminating information on the availability and use of new technology, media, and materials for the education of handicapped individuals.

Pub. L. 94-457 Title III, Sec. 317, Oct. 8, 1986, 100 Stat. 1171.

Sec. 1462. Authorization of appropriations

For the purposes of carrying out this part, there are authorized to be appropriated $10,000,000 for fiscal year 1987, $10,500,000 for fiscal year 1988, and $11,025,000 for fiscal year 1989.

Pub. L. 94-457, Title III, Sec. 317, Oct. 8, 1986, 100 Stat. 1171.

Part H—Handicapped Infants And Toddlers

Sec. 1471. Findings and policy

FINDINGS

(a) The Congress finds that there is an urgent and substantial need—

(1) to enhance the development of handicapped infants and toddlers and to minimize their potential for developmental delay,

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after handicapped infants and toddlers reach school age,

(3) to minimize the likelihood of institutionalization of handicapped individuals and maximize the potential for their independent living in society, and

(4) to enhance the capacity of families to meet the special needs of their handicapped infants and toddlers.

POLICY

(b) It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to handicapped infants, toddlers, and their families.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1145.

Sec. 1472. Definitions

As used in this part—

(1) The term 'handicapped infants and toddlers' means individuals from birth to age 2, inclusive, who need early intervention services because they—

(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psychosocial development, or self-help skills, or

(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

(2) The term 'early intervention services' are developmental services which—

(A) are provided under public supervision,

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

(C) are designed to meet a handicapped infant's or toddler's developmental needs in any one or more of the following areas:

(i) physical development,
(ii) cognitive development,
(iii) language and speech development,
(iv) psychosocial development, or
(v) self-help skills,

(D) meet the standard of the State, including the requirements of this part,

(E) include—

(i) family training, counseling, and home visits,
(ii) special instruction,
(iii) speech pathology and audiology,
(iv) occupational therapy,
(v) physical therapy,
(vi) psychological services,
(vii) case management services,
(viii) medical services only for diagnostic or evaluation purposes,
(ix) early identification, screening, and assessment services, and
(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,

(F) are provided by qualified personnel, including—

(i) special educators,
(ii) speech language pathologists and audiologists,
(iii) occupational therapists,
(iv) physical therapists,
(v) psychologists,
(vi) social workers,
(vii) nurses, and
(viii) nutritionists, and

(G) are provided in conformity with an individualized family service plan adopted in accordance with section 1477.

(3) The term 'developmental delay' has the meaning given such term by a State under section 1476(b)(1).

(4) The term 'Council' means the State Interagency Coordinating Council established under section 1482.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1146.

Sec. 1473. General authority

The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 1484) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for handicapped infants and toddlers and their families.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1147.

Sec. 1474. General eligibility

In order to be eligible for a grant under section 1473 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 1478) that the State has established a State Interagency Coordinating Council which meets the requirements of section 1482.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1147.

Sec. 1475. Continuing eligibility

FIRST TWO YEARS

(a) In order to be eligible for a grant under section 1473 for the first or second year of a State's participation under this part, a State shall include in its application under section 1478 for that year an assurance that funds received under section 1473 shall be used to assist the State to plan, develop, and implement the statewide system required by section 1476.

THIRD AND FOURTH YEAR

(b)(1) In order to be eligible for a grant under section 1473 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 1478 for that year information and assurances demonstrating to the satisfaction of the Secretary that—

(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 1476 or obtained a waiver from the Secretary under paragraph (2),

(B) funds shall be used to plan, develop, and implement the statewide system required by section 1476, and

(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 1473, except that in order to comply with section 1476(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 1473 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the State demonstrates in its application—

(A) that the State has made a good faith effort to adopt such a policy,

(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

FIFTH AND SUCCEEDING YEARS

(c) In order to be eligible for a grant under section 1473 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its application under section 1478 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 1476 and a description of services to be provided under section 1476(b)(2).

EXCEPTION

(d) Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to handicapped children from birth through age 2, inclusive, shall be eligible for a grant under section 1473 for the first through fourth years of a State's participation under this part.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1147.

Sec. 1476. Requirements for statewide system

IN GENERAL

(a) A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all handicapped infants and toddlers and their families shall include the minimum components under subsection (b).

MINIMUM COMPONENTS

(b) The statewide system required by subsection (a) shall include, at a minimum—

(1) a definition of the term 'developmentally delayed' that will be used by the State in carrying out programs under this part,

(2) timetables for ensuring that appropriate early intervention services will be available to all handicapped infants and toddlers in the State before the beginning of the fifth year of a State's participation under this part,

(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each handicapped infant and toddler in the State and the needs of the families to appropriately assist in the development of the handicapped infant or toddler,

(4) for each handicapped infant and toddler in the State, an individualized family service plan in accordance with section 1477, including case management services in accordance with such service plan,

(5) a comprehensive child find system, consistent with part B of this Act, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources,

(6) a public awareness program focusing on early identification of handicapped infants and toddlers,

(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

(8) a comprehensive system of personnel development,

(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration, supervision, and monitoring of programs and activities receiving assistance under section 1473 to ensure compliance with this part,

(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

(C) the assignment of financial responsibility to the appropriate agency,

(D) the development of procedures to ensure that services are provided to handicapped infants and toddlers and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

(E) the resolution of intra- and interagency disputes, and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 1481(a),

(12) procedural safeguards with respect to programs under this part as required by section 1480, and

(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

(14) a system for compiling data on the numbers of handicapped infants and toddlers and their families in the State

in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1148.

Sec. 1477. Individualized family service plan

ASSESSMENT AND PROGRAM DEVELOPMENT

(a) Each handicapped infant or toddler and the infant's or toddler's family shall receive—

(1) a multidisciplinary assessment of unique needs and identification of services appropriate to meet such needs, and

(2) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

PERIODIC REVIEW

(b) The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

PROMPTNESS AFTER ASSESSMENT

(c) The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

CONTENT OF PLAN

(d) The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, language and speech development, psychosocial development, and self-help skills, based on acceptable objective criteria,

(2) a statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler,

(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes are being made and whether modifications or revisions of the outcomes or services are necessary,

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

(5) the projected dates for initiation of services and the anticipated duration of such services,

(6) the name of the case manager from the profession most immediately relevant to the infant's or toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

(7) the steps to be taken supporting the transition of the handicapped toddler to services provided under part B to the extent such services are considered appropriate.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1149.

Sec. 1478. State application and assurances

APPLICATION

(a) Any State desiring to receive a grant under section 1473 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1473,

(2) information demonstrating eligibility of the State under section 1474,

(3) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 1475,

(4)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

(5) a description of the uses for which funds will be expended in accordance with this part, for the fifth and succeeding fiscal years, a description of the services to be provided,

(6) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State, and

(7) such other information and assurances as the Secretary may reasonably require by regulation.

STATEMENT OF ASSURANCES

(b) Any State desiring to receive a grant under section 1473 shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

(1) assure that funds paid to the State under section 1473 will be expended in accordance with this part,

(2) contain assurances that the State will comply with the requirements of section 1481,

(3) provide satisfactory assurance that the control of funds provided under section 1473, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

(4) provide for (A) making such reports in such form and containing such information as the Secretary may require

to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part,

(5) provide satisfactory assurance that Federal funds made available under section 1473 (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for handicapped infants and toddlers and their families and in no case to supplant such State and local funds,

(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 1473 to the State, and

(7) such other information and assurances as the Secretary may reasonably require by regulation.

APPROVAL OF APPLICATION AND ASSURANCES REQUIRED

(c) No State may receive a grant under section 1473 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1150.

Sec. 1479. Uses of funds

In addition to using funds provided under section 1473 to plan, develop, and implement the statewide system required by section 1476, a State may use such funds—

(1) for direct services for handicapped infants and toddlers and their families that are not otherwise provided from other public or private sources, and

(2) to expand and improve on services for handicapped infants and toddlers and their families that are otherwise available.

Pub. L. 99-457 Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1150.

Sec. 1480. Procedural safeguards

The procedural safeguards required to be included in a statewide system under section 1476(b)(12) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information.

(3) The opportunity for parents or a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(4) Procedures to protect the rights of the handicapped infant or toddler whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

(5) Written prior notice to the parents or guardian of the handicapped infant or toddler whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the handicapped infant or toddler.

(6) Procedures designed to assure that the notice required by paragraph (5) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(7) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or if applying for initial services shall receive the services not in dispute.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1151.

Sec. 1481. Payor of last resort

NONSUBSTITUTION

(a) Funds provided under section 1473 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 1473 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

REDUCTION OF OTHER BENEFITS

(b) Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for handicapped infants and toddlers) within the State.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1152.

Sec. 1482. State interagency coordinating council

ESTABLISHMENT

(a)(1) Any State which desires to receive financial assistance under section 1473 shall establish a State Interagency Coordinating Council composed of 15 members.

(2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

COMPOSITION

(b) The Council shall be composed of—

(1) at least 3 parents of handicapped infants or toddlers or handicapped children aged 3 through 6, inclusive,

(2) at least 3 public or private provider of early intervention services

(3) at least one representative from the State legislature,

(4) at least one person involved in personnel preparation,

(5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families; and

(6) others selected by the Governor.

MEETINGS

(c) The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

MANAGEMENT AUTHORITY

(d) Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to hire staff, and obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

FUNCTIONS OF COUNCIL

(e) The Council shall—

(1) advise and assist the lead agency designated or established under section 1476(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

(2) advise and assist the lead agency in the preparation of applications and amendments thereto, and

(3) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for handicapped infants and toddlers and their families operated within the State.

CONFLICT OF INTEREST

(f) No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

USE OF EXISTING COUNCILS

(g) To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 1473, such State shall establish a council that complies in full with this section.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1153.

Sec. 1483. Federal administration

Sections 1416, 1417, and 1420 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 1476(b)(9),

(2) any reference to the education of handicapped children and the education of all handicapped children and the provision of free public education to all handicapped children shall be deemed to be a reference to the provision of services to handicapped infants and toddlers in accordance with this part, and

(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1154.

Sec. 1484. Allocation of funds

(a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

(b)(1) The Secretary shall make payments to the Secretary of the Interior according to the need for such assistance for the provision of early intervention services to handicapped infants and toddlers and their families on reservations serviced by the elementary and secondary schools operated for Indians by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which meets the requirements of section 1478

and which is approved by the Secretary. Section 1416 shall apply to any such application.

(c)(1) For each of the fiscal years 1987 through 1991 from the funds remaining after the reservation and payments under subsections (a) and (b), the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State shall receive less than 0.5 percent of such remainder.

(2) For the purpose of paragraph (1)—

(A) the terms 'infants' and 'toddlers' mean children from birth to age 2, inclusive, and

(B) the term 'State' does not include the jurisdictions described in subsection (a).

(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

Pub. L. 99-457 Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1154.

Sec. 1485. Authorization of appropriations

There are authorized to be appropriated to carry out this part $50,000,000 for fiscal year 1987, $75,000,000 for fiscal year 1988, and such sums as may be necessary for each of the 3 succeeding fiscal years.

STUDY OF SERVICES; COORDINATION OF ACTIONS

Section 101(b) of Pub. L. 99-457 provided that:

(1) The Secretary of Education and the Secretary of Health and Human Services shall conduct a joint study of Federal funding sources and services for early intervention programs currently available and shall jointly act to facilitate interagency coordination of Federal resources for such programs and to ensure that funding available to handicapped infants, toddlers, children, and youth from Federal programs, other than programs under the Education of the Handicapped Act, is not being withdrawn or reduced.

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall submit a joint report to the Congress describing the findings of the study conducted under paragraph (1) and describing the joint action taken under that paragraph.

Pub. L. 99-457, Title I, Sec. 101, Oct. 8, 1986, 100 Stat. 1155.

EHLR Editorial Note: *The following are two free-standing amendments enacted by Congress in Handicapped Programs Technical Amendments Act of 1988.*

Sec. 109. Special Rule for Fiscal Year 1987 Preschool Grants

(a) SPECIAL RULE—Notwithstanding section 412(b)(2) of the General Education Provisions Act, a State educational agency may use funds made available in fiscal year 1986 under section 619 of the Education of the Handicapped Act for expenditure in fiscal year 1987 in accordance with the statutory and regulatory provisions relating to such program that were in effect for fiscal year 1986 and the application submitted by such agency for such program for such fiscal year.

(b) EFFECTIVE DATE—This section shall be effective as of October 1, 1987.

Sec. 110. Preschool Grants

The provisions of section 300.300(b)(3) of title 34, Code of Federal Regulations, shall not apply with respect to children aged 3 through 5, inclusive, in any State for any fiscal year for which the State receives a grant under section 619(a)(1) of the Education of the Handicapped Act.

Pub. L. 100-630, Nov. 7, 1988, 102 Stat. 3289.

ELEMENTARY AND SECONDARY EDUCATION ACT
(Selected Sections)
20 U.S.C. Secs. 2701-2796

[Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as added Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 140]

CHAPTER 47—STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS

Subchapter I—Basic Programs

DIVISION 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

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ELEMENTARY AND SECONDARY EDUCATION ACT
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CHAPTER 47—STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS

Subchapter I—Basic Programs

DIVISION 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

Sec. 2701. Declaration of policy and statement of purpose

DECLARATION OF POLICY

(a) In recognition of—

(1) the special educational needs of children of low-income families and the impact of concentrations of low-income families on the ability of local educational agencies to provide educational programs which meet such needs, and

(2) the special educational needs of children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children,

the Congress declares it to be the policy of the United States to—

(A) provide financial assistance to State and local educational agencies to meet the special needs of such educationally deprived children at the preschool, elementary, and secondary levels;

(B) expand the program authorized by this chapter over the next 5 years by increasing funding for this chapter by at least $500,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 1993; and

(C) provide such assistance in a way which eliminates unnecessary administrative burden and paperwork and overly prescriptive regulations and provides flexibility to State and local educational agencies in making educational decisions.

STATEMENT OF PURPOSE

(b) The purpose of assistance under this chapter is to improve the educational opportunities of educationally deprived children by helping such children succeed in the regular program of the local educational agency, attain grade-level proficiency, and improve achievement in basic and more advanced skills. These purposes shall be accomplished through such means as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education.

Pub. L. 89-10, Title I, Sec. 1001, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 140.

Part A—Basic Programs Operated By Local Educational Agencies

SUBPART 1—ALLOCATIONS

Sec. 2711. Basic Grants

AMOUNT OF GRANTS

(a)(1) Grants for Territories.—There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 percent of the amount appropriated for such year for payments to States under this section. The amount appropriated pursuant to this paragraph shall be allotted by the Secretary (A) among Guam, American Samoa, the Virgin Islands, The Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Secretary determines will best carry out the purposes of this chapter.

(2) Grants for Local Educational Agencies and Puerto Rico.—

(A) In any case in which the Secretary determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)), be determined by multiplying the number of children counted under subsection (c) by 40 percent of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, such amount shall be 80 percent of the average per pupil expenditure in the United States, or (ii) if the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, such amount shall be 120 percent of the average per pupil expenditure in the United States.

(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Secretary.

(C) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) for the Commonwealth of Puerto Rico by the product of—

(i) the percentage determined under the preceding sentence; and

(ii) 32 percent of the average per pupil expenditure in the United States.

(3) Special Allocation Procedures.—

(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Secretary, which does assume such responsibility, shall be eligible to receive such portion of the allocation.

(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this chapter.

(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Secretary for authority during any particular fiscal year to make the allocations under this part (other than section 1006) directly to local educational agencies without regard to the counties or may continue to make such allocations if the agency had the authority to do so under chapter 1 of the Education Consolidation and Improvement Act of 1981. If the Secretary approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Secretary for a final determination.

(4) Definition.—For purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

MINIMUM NUMBER OF CHILDREN TO QUALIFY

(b) A local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

(1) In any case (except as provided in paragraph (3)) in which the Secretary determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least 10.

(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least 10.

(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Secretary has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Secretary for the purposes of this subsection.

CHILDREN TO BE COUNTED

(c)(1) Categories of Children.—The number of children to be counted for purposes of this section is the aggregate of—

(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A),

(B) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), and

(C) the number of children aged 5 to 17, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part D for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

(2) Determination of Number of Children.—

(A) For the purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census.

(B) For purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census for a family of 4 in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of such determination. The Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

(C) When requested by the Secretary, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Secretary is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

PROGRAM FOR INDIAN CHILDREN

(d)(1) From the amount allotted for payments to the Secretary of the Interior under the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Secretary determines will best carry out the purposes of this chapter with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 percent of (A) the average per pupil expenditure in the State in which the agency is located, or (B) 120 percent of such expenditure in the United States, whichever is the greater.

(2) The amount allotted for payments to the Secretary of the Interior under the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Secretary, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools for Indian children operated with federal assistance or operated by the Department of the Interior. Such payment shall be made pursuant to an agreement between the Secretary and the Secretary of the Interior containing such assurances and terms as the Secretary determines will best achieve the purposes of this chapter. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 2 of this part and that the Department of the Interior will comply in all other respects with the requirements of this chapter, and (B) provision for carrying out the applicable provisions of subpart 2 of this part and part F. Such agreement shall consider a tribal organization operating a school under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1987 as a local educational agency, and shall consider the Secretary of the Interior as a State or State educational agency for all purposes defining the authority of State or State educational agencies relative to local educational agencies. If, in the capacity as a State educational agency, the Secretary of the Interior promulgates regulations applicable to such tribal organizations, the Secretary shall comply with section 1451 of this Act and with section 553 of title 5 of the United States Code, relating to administrative procedure, and such regulations must be consistent with subsections (d) and (e) of section 1121, section 1130, and section 1133 of the Education Amendments of 1978.

STATE MINIMUM

(e)(1) For any fiscal year for which—

(A) sums available for the purposes of this section exceed sums available under chapter 1 of the Education Consolidation and Improvement Act of 1981 for fiscal year 1988; and

(B)(i) sums available for the purpose of section 1006 equal or exceed $400,000,000, or

(ii) sums available for the purpose of section 1005 equal or exceed amounts appropriated for such purpose in fiscal year 1988 by $700,000,000,

the aggregate amount allotted for all local educational agencies within a State may not be less than one-quarter of 1 percent of the total amount available for such fiscal year under this section.

(2) The provisions of paragraph (1) shall apply only if each State is allotted an amount which is not less than the payment made to each State under chapter 1 of the Education Consolidation and Improvement Act of 1981 for fiscal year 1988.

(3)(A) No State shall, by reason of the application of the provisions of paragraph (1) of this subsection, be allotted more than—

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B), whichever is less.

(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

(i) the number of children in such State counted under subsection (c) in the fiscal year specified in subparagraph (A), multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this section for that year.

DURATION OF ASSISTANCE

(g)[1] During the period beginning October 1, 1988, and ending September 30, 1993, the Secretary shall, in accordance with the provisions of this part, make payments to State educational agencies for grants made on the basis of entitlements created under this section.

Pub. L. 89-10, Title I, Sec. 1005, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 141.

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[1] So in original. There is no subsection (f).

Sec. 2712. Grants for local educational agencies in counties with especially high concentrations of children from low-income families

ELIGIBILITY FOR AND AMOUNT OF SPECIAL GRANTS

(a)(1)(A) Except as otherwise provided in this paragraph, each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this chapter for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if—

(i) the number of children counted under section 1005(c) of this chapter in the school district of local educational agencies in such county for the preceding fiscal year exceeds 6,500, or

(ii) the number of children counted under section 1005(c) exceeds 15 percent of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county in that fiscal year.

(B) Except as provided in subparagraph (C), no State described in subparagraph (A) shall receive less than—

(i) one-quarter of 1 percent of the sums appropriated under subsection (c) of this section for such fiscal year; or

(ii) $250,000.

whichever is higher.

(C) No State shall, by reason of the application of the provisions of subparagraph (B)(i) of this paragraph, be allotted more than—

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B), whichever is less.

(D) For the purpose of subparagraph (C), the amount for each State equals—

(i) the number of children in such State counted for purposes of this section in the fiscal year specified in subparagraph (B),

multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this section for that year.

(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Secretary shall determine the product of—

(A) the greater of—

(i) the number of children in excess of 6,500 counted under section 1005(c) for the preceding fiscal year, in the school districts of local educational agencies of a county which qualifies on the basis of subparagraph (A) of paragraph (1); or

(ii) the number of children counted under section 1005(c) for the preceding fiscal year in the school districts of local educational agencies in a county which qualifies on the basis of subparagraph (B) of paragraph (1); and

(B) the quotient resulting from the division of the amount determined for those agencies under section 1005(a)(2) of this chapter for the fiscal year for which the determination is being made divided by the total number of children counted under section 1005(c) for that agency for the preceding fiscal year.

(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount reserved under subsection (c) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal

year bears to the sum of such products for all counties in the United States for that fiscal year.

(4) For the purposes of this section, the Secretary shall determine the number of children counted under section 1005(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the payment for such county is determined under section 1005.

(5)(A) Pursuant to regulations established by the Secretary and except as provided in subparagraphs (B) and (C) and paragraph (6), funds allocated to counties under this part shall be allocated by the State educational agency only to those local educational agencies whose school districts lie (in whole or in part) within the county and which are determined by the State educational agency to meet the eligibility criteria of clauses (i) and (ii) of paragraph (1)(A). Such determination shall be made on the basis of the available poverty data which such State educational agency determines best reflect the current distribution in the local educational agency of low-income families consistent with the purposes of this chapter. The amount of funds under this part that each qualifying local educational agency receives shall be proportionate to the number or percentage of children from low-income families in the school districts of the local educational agency.

(B) In counties where no local educational agency meets the criteria of clause (i) or (ii) of paragraph (1)(A), the State educational agency shall allocate such funds among the local educational agencies within such counties (in whole or in part) in rank order of their respective concentration and numbers of children from low-income families and in amounts which are consistent with the degree of concentration of poverty. Only local educational agencies with concentrations of poverty that exceed the county wide average of poverty shall receive any funds pursuant to the provisions of this subparagraph.

(C) In States which receive the minimum grant amount under paragraph (1), the State educational agency shall allocate such funds among the local educational agencies in such State by either of the following methods:

(i) in accordance with the provisions of subparagraphs (A) and (B) of this paragraph; or

(ii) without regard to the counties in which such local educational agencies are located, in rank order of their respective concentration and numbers of children from low-income families and in amounts which are consistent with the degree of concentration of poverty, except that only those local educational agencies with concentrations of poverty that exceed the Statewide average of poverty shall receive any funds pursuant to the provisions of this clause.

(6) A State may reserve not more than 2 percent of its allocation under this section for the purpose of making direct payments to local educational agencies that meet the criteria of clauses (i) and (ii) of paragraph (1)(A), but are otherwise ineligible.

PAYMENTS; USE OF FUNDS

(b)(1) The total amount which Counties in a State are entitled to under this section for any fiscal year shall be added to the amount paid to that State under section 1401 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 1012 and shall be subject to the other requirements in subpart 2 of this part.

RESERVATION OF FUNDS

(c)(1) For any fiscal year for which amounts appropriated for part A of this chapter exceed $3,900,000,000, the amounts specified in paragraph (2) of this subsection shall be available to carry out this section.

(2)(A) The first $400,000,000 in excess of $3,900,000,000 appropriated for part A of this chapter in any fiscal year shall be available to carry out this section.

(B) Whenever the amounts appropriated for part A exceed $4,300,000,000 in any fiscal year, 10 percent of the amount appropriated for that fiscal year shall be available to carry out this section, except that no State shall, as a result of implementation of paragraph (2) of this subsection, receive less under section 1005 than it received for the previous fiscal year under such section or under section 554(a)(1)(A) of the Education Consolidation and Improvement Act of 1981.

RATABLE REDUCTION RULE

(d) If the sums available under subsection (c) for any fiscal year for making payments under this section are not sufficient to pay in full the total amounts which all States are entitled to receive under subsection (a) for such fiscal year, the maximum amounts which all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

Pub. L. 89-10, Title I, Sec. 1006, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 146.

SUBPART 2—BASIC PROGRAM REQUIREMENTS

Sec. 2721. Uses of Funds

PROGRAM DESCRIPTION

(a)(1) A local educational agency may use funds received under this part only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section

1014 and which are included in an application for assistance approved by the State educational agency.

(2) Such programs and projects under paragraph (1) may include preschool through secondary programs; the acquisition of equipment and instructional materials; books and school library resources; employment of special instructional personnel, school counselors, and other pupil services personnel; employment and training of education aides; payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas; the training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals (including training in preparation for the implementation of programs and projects in a subsequent school year); the construction, where necessary, of school facilities; parental involvement activities under section 1016; planning for and evaluation of such programs and projects assisted under this chapter; and other expenditures authorized under this chapter.

(3) State and local educational agencies are encouraged to develop programs to assist eligible children to improve their achievement in basic skills and more advanced skills and to consider year-round services and activities, including intensive summer school programs.

INNOVATION PROJECTS

(b) Subject to the approval of the State educational agency, a local educational agency may use not more than 5 percent of payments under this part for the costs of conducting innovative projects developed by the local educational agency that include only—

(1) the continuation of services to children eligible for services in any preceding year for a period sufficient to maintain progress made during their eligibility;

(2) the provision of continued services to eligible children transferred to ineligible areas or schools as part of a desegregation plan for a period not to exceed 2 years;

(3) incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this chapter;

(4) training of chapter 1 and nonchapter 1 paid teachers and librarians with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs;

(5) programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs;

(6) encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children; and

(7) assistance by local educational agencies of schools identified under section 1021(b).

Pub. L. 89-10, Title I, Sec. 1011, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 149.

Sec. 2722. Assurances and applications

STATE EDUCATIONAL AGENCY ASSURANCES

(a) Any State desiring to participate under this chapter shall submit to the Secretary, through its State educational agency, assurances that the State educational agency—

(1) will meet the requirements in section 435(b)(2) and (b)(5) of the General Education Provisions Act relating to fiscal control and fund accounting procedures;

(2) will carry out the activities required under this chapter with regard to evaluation and school program improvement;

(3) has on file a program improvement plan that meets the requirements of section 1020; and

(4) will ensure that its local educational agencies and State agencies receiving funds under this chapter comply with all applicable statutory and regulatory provisions pertaining to this chapter.

Such assurances shall remain in effect for the duration of participation under this chapter.

LOCAL APPLICATIONS

(b) A local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the procedure to be used under section 1014(b) to assess students' needs and establish program goals, describes the programs and projects to be conducted with such assistance for a period of not more than 3 years, and describes the desired outcomes for eligible children, in terms of basic and more advanced skills that all children are expected to master, which will be used as the basis for evaluating the program or project as required by section 1019, and such application has been approved by the State educational agency and developed in consultation with teachers and parents.

LOCAL ASSURANCES

(c) Such application shall provide assurance that the programs and projects described—

(1) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served, are designed and implemented in consultation with teachers (including early childhood education professionals and librarians when appropriate), and provide for parental involvement in accordance with section 1016;

(2) make provision for services to educationally deprived children attending private elementary and secondary schools in accordance with section 1017;

(3) allocate time and resources for frequent and regular coordination of the curriculum under this chapter with the regular instructional program; and

(4) in the case of participating students who are also limited English proficient or are handicapped, provide maximum coordination between services provided under this chapter and services provided to address children's handicapping

conditions or limited English proficiency, in order to increase program effectiveness eliminate duplication, and reduce fragmentation of the students' programs.

Pub. L. 89-10, Title I, Sec. 1012, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 150.

Sec. 2723. Eligible schools

GENERAL PROVISIONS

(a)(1) Subject to subsection (b), a local educational agency shall use funds received under this chapter in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as 'eligible school attendance areas'), and where funds under this chapter are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest within each grade span grouping or for the entire local educational agency, according to relative degree of concentration of children from low-income families. A local educational agency may carry out a program or project assisted under this chapter in an eligible school attendance area only if it also carries out such program or project in all other eligible school attendance areas which are ranked higher under the first sentence of this paragraph.

(2) The same measure of low income, which shall be chosen by the local educational agency on the basis of the best available data and which may be a composite of several indicators, shall be used with respect to all school attendance areas within a grade span grouping or for the entire local educational agency, both to identify the areas having high concentrations of children from low-income families and to determine the ranking of each area.

(3) The requirements of this subsection shall not apply in the case of a local educational agency with a total enrollment of less than 1,000 children, but this paragraph does not relieve such an agency from the responsibility to serve eligible children according to the provisions of section 1014.

LOCAL EDUCATIONAL AGENCY DISCRETION

(b) Nothwithstanding subsection (a)(1) of this section, a local educational agency shall have discretion to identify and rank eligible attendance areas as follows:

(1) A local educational agency may designate as eligible and serve all of its attendance areas within a grade space grouping or in the entire local educational agency if the percentage of children from low-income families in each attendance area of the agency is within 5 percentage points of the average percentage of such children within a grade span grouping or for the entire local educational agency.

(2) A local educational agency may designate any school attendance area in which at least 25 percent of the children are from low-income families as an eligible school attendance area if the aggregate amount expended under this chapter and under a State program meeting the requirements of section 1018(d)(1)(B) in that fiscal year in each school attendance area of that agency eligible under subsection (a) in which projects assisted under this chapter were carried out in the preceding fiscal year equals or exceeds the amount expended from those sources in that area in such preceding fiscal year if such attendance areas qualify for such amounts under subsection (c)(1).

(3) A local educational agency may, with the approval of the State educational agency, designate as eligible and serve school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this paragraph shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of deprived children from low-income families in project areas served by the local educational agency.

(4) Funds received under this part may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

(5) If an eligible school attendance area or eligible school was so designated and served in accordance with subsection (a) in the immediately preceding fiscal year, it may continue to be so designated for the subsequent fiscal year even though it does not qualify as eligible under such subsection in such additional year.

(6) With the approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions or numbers of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this part, except that (A) the number of children attending private elementary and secondary schools who receive services under this part shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this part shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

ALLOCATIONS

(c)(1) Except as provided in paragraph (2), a local educational agency shall allocate funds under this part among project areas or schools on the basis of the number and needs of children to be served as determined in accordance with section 1014.

(2) Children in eligible schools, who receive services under this part and subsequently become ineligible due to improved academic achievement attributable to such services, may continue to be considered eligible for 2 additional years only for the purpose of determining the allocation of funds among eligible schools under paragraph (1). Any funds so allocated shall be used to provide services to any children determined to be eligible under section 1014.

Pub. L. 89-10, Title I, Sec. 1013, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 151.

Sec. 2724. Eligible children

GENERAL PROVISIONS

(a)(1) Except as provided in subsections (c) and (d) of this section and section 1015, a local educational agency shall use funds received under this part for educationally deprived children, identified in accordance with subsection (b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 1013.

(2) The eligible population for services under this part are—

(A) those children up to age 21 who are entitled to a free public education through grade 12, and

(B) those children who are not yet at a grade level where the local educational agency provides a free public education, yet are of an age at which they can benefit from an organized instructional program provided in a school or other educational setting.

ASSESSMENT OF EDUCATIONAL NEED

(b) A local educational agency may receive funds under this part only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas; (2) identify the general instructional areas on which the program will focus; (3) select those educationally deprived children who have the greatest need for special assistance, as identified on the basis of educationally related objective criteria established by the local educational agency, which include written or oral testing instruments, that are uniformly applied to particular grade levels throughout the local educational agency; and (4) determine the special educational needs (and library resource needs) of participating children with specificity sufficient to ensure concentration on such needs.

LOCAL EDUCATIONAL AGENCY

(c)(1) Educationally deprived children who begin participation in a program or project assisted under this part, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this part, may, if the local agency so determines, continue to participate in a program or project funded under this part for the duration of that same school year.

(2) In providing services under this part a local educational agency may skip educationally deprived children in greatest need of assistance who are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this part.

(3) A child who, in the previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this part while continuing to be educationally deprived for a maximum of 2 additional years.

SPECIAL RULES

(d)(1) Children receiving services to overcome a handicapping condition or limited English proficiency shall also be eligible to receive services under this part, if they have needs stemming from educational deprivation and not related solely to the handicapping condition or limited English proficiency. Such children shall be selected on the same basis as other children identified as eligible for and selected to receive services under this part. Funds under this part may not be used to provide services that are otherwise required by law to be made available to such children.

(2) A student who at any time in the previous 2 years was receiving services under subpart 3 of part D of this chapter or under subpart 3 of part B of title I of the Elementary and Secondary Education Act (as amended by chapter 1 of the Education Consolidation and Improvement Act of 1981) shall be considered eligible for services under this part, and may be served subject to the provisions of subsections (a) and (b).

Pub. L. 89-10, Title I, Sec. 1014, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 153.

Sec. 2725. Schoolwide projects

USE OF FUNDS FOR SCHOOLWIDE PROJECTS

(a) In the case of any school serving an attendance area that is eligible to receive services under this part and in which, for the first year of the 3-year period of projects assisted under this section, not less than 75 percent of the children are from low-income families or any eligible school in which not less than 75 percent of the children enrolled in the school are from low-income families, the local educational agency may carry out a project under this part to upgrade the entire educational program in that school if the requirements of subsections (b), (c), (d), and (e) are met.

DESIGNATION OF SCHOOLS

(b) A school may be designated for a schoolwide project under subsection (a) if—

(1) a plan has been developed for that school by the local educational agency and has been approved by the State educational agency which—

(A) provides for a comprehensive assessment of educational needs of all students in the school, in particular the special needs of educationally deprived children;

(B) establishes goals to meet the special needs of all students and to ensure that educationally deprived children are served effectively and demonstrate performance gains comparable to other students;

(C) describes the instructional program, pupil services, and procedures to be used to implement those goals;

(D) describes the specific uses of funds under this part as part of that program; and

(E) describes how the school will move to implement an effective schools program as defined in section 1471, if appropriate;

(2) the plan has been developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, librarians, education aides, pupil services personnel, and administrators (and secondary students if the plan relates to a secondary school);

(3) the plan provides for consultation among individuals described in paragraph (2) as to the educational progress of all students and the participation of such individuals in the development and implementation of the accountability measures required by subsection (e);

(4) appropriate training is provided to parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable them effectively to carry out the plan;

(5) the plan includes procedures for measuring progress, as required by subsection (e), and describes the particular measures to be used; and

(6)(A) in the case of a school district in which there are one or more schools described in subsection (a) and there are also one or more other schools serving project areas, the local educational agency makes the federal funds provided under this part available for children in such schools described in subsection (a) in amounts which, per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools; and

(B) the average per pupil expenditure in schools described in subsection (a) (excluding amounts expended under a State compensatory education program) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year, except that the cost of services for programs described in section 1018(d)(2)(A) shall be included for each fiscal year as appropriate only in proportion to the number of children in the building served in such programs in the year for which this determination is made.

APPROVAL OF PLAN; OPERATION OF PROJECT

(c)(1) The State educational agency shall approve the plan of any local educational agency for a schoolwide project if that plan meets the requirements of subsection (b).

(2) For any school which has such a plan approved, the local educational agency—

(A) shall, in order to carry out the plan, be relieved of any requirements under this part with respect to the commingling of funds provided under this chapter with funds available for regular programs;

(B) shall use funds received under this part only to supplement, and to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the school approved for a schoolwide project under paragraph (1);

(C) shall comply with the provisions of section 1018(c); and

(D) may not be required to identify particular children as being eligible to participate in projects assisted under this part but shall identify educationally deprived children for purposes of subsections (b) and (e) of this section.

USE OF FUNDS

(d) In addition to uses under section 1011, funds may be used in schoolwide projects for—

(1) planning and implementing effective schools programs, and

(2) other activities to improve the instructional program and pupil services in the school, such as reducing class size, training staff and parents of children to be served, and implementing extended schoolday programs.

ACCOUNTABILITY

(e)(1) The State educational agency may grant authority for a local educational agency to operate a schoolwide project for a period of 3 years. If a school meets the accountability requirements in paragraphs (2) and (3) at the end of such period, as determined by the State educational agency, that school will be allowed to continue the schoolwide project for an additional 3-year period.

(2)(A) Except as provided in subparagraph (B), after 3 years, a school must be able to demonstrate (i) that the achievement level of educationally deprived children as measured according to the means specified in the plan required by subsection (b) exceeds the average achievement of participating children districtwide, or (ii) that the achievement of educationally deprived children in that school exceeds the average achievement of such children in that school in the 3 fiscal years prior to initiation of the schoolwide project.

(B) For a secondary school, demonstration of lower dropout rates, increased retention rates, or increased graduation rates is acceptable in lieu of increased achievement, if achievement levels over the 3-year schoolwide project period, compared with the 3-year period immediately preceding the schoolwide project, do not decline.

(3) Schools shall annually collect achievement and other assessment data for the purposes of paragraph (2). The results of achievement and other assessments shall be made

available annually to parents, the public, and the State educational agency.

Pub. L. 89-10, Title I, Sec. 1015, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 154.

Sec. 2726. **Parental involvement**

FINDINGS; GENERAL REQUIREMENT

(a)(1) Congress finds that activities by schools to increase parental involvement are a vital part of programs under this chapter.

(2) Toward that end, a local educational agency may receive funds under this chapter only if it implements programs, activities, and procedures for the involvement of parents in programs assisted under this chapter. Such activities and procedures shall be planned and implemented with meaningful consultation with parents of participating children and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under subsection (b).

(3) For purposes of this section, parental involvement includes, but is not limited to, parent input into the design and implementation of programs under this chapter, volunteer or paid participation by parents in school activities, and programs, training, and materials which build parents' capacity to improve their children's learning in the home and in school.

GOALS OF PARENTAL INVOLVEMENT

(b) In carrying out the requirements of subsection (a), a local educational agency shall, in coordination with parents of participating children, develop programs, activities, and procedures which have the following goals—

(1) to inform parents of participating children of the program under this chapter, the reasons for their children's participation in such programs, and the specific instructional objectives and methods of the program;

(2) to support the efforts of parents, including training parents, to the maximum extent practicable, to work with their children in the home to attain the instructional objectives of programs under this chapter and to understand the program requirements of this chapter and to train parents and teachers to build a partnership between home and school;

(3) to train teachers and other staff involved in programs under this chapter to work effectively with the parents of participating students;

(4) to consult with parents, on an ongoing basis, concerning the manner in which the school and parents can better work together to achieve the program's objectives and to give parents a feeling of partnership in the education of their children;

(5) to provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, allowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives; and

(6) to ensure opportunities, to the extent practicable, for the full participation of parents who lack literacy skills or whose native language is not English.

MECHANISMS FOR PARENTAL INVOLVEMENT

(c)(1) Each local educational agency, after consultation with and review by parents, shall develop written policies to ensure that parents are involved in the planning, design, and implementation of programs and shall provide such reasonable support for parental involvement activities as parents may request. Such policies shall be made available to parents of participating children.

(2) Each local educational agency shall convene an annual meeting to which all parents of participating children shall be invited, to explain to parents the programs and activities provided with funds under this chapter. Such meetings may be districtwide or at the building level, as long as all such parents are given an opportunity to participate.

(3) Each local educational agency shall provide parents of participating children with reports on the children's progress, and, to the extent practical, hold a parent-teacher conference with the parents of each child served in the program, to discuss that child's progress, placement, and methods by which parents can complement the child's instruction. Educational personnel under this chapter shall be readily accessible to parents and shall permit parents to observe activities under this chapter.

(4) Each local educational agency shall (A) provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire; (B) provide parents of participating children with timely information about the program; and (C) make parents aware of parental involvement requirements and other relevant provisions of programs under this chapter.

(5) Parent programs, activities, and procedures may include regular parent conferences; parent resource centers; parent training programs and reasonable and necessary expenditures associated with the attendance of parents at training sessions; hiring, training, and utilization of parental involvement liaison workers; reporting to parents on the children's progress; training and support of personnel to work with parents, to coordinate parent activities, and to make contact in the home; use of parents as classroom volunteers, tutors, and aides; provision of school-to-home complementary curriculum and materials and assistance in implementing home-based education activities that reinforce classroom instruction and student motivation; provision of timely information on programs under this chapter (such as program plans and evaluations); soliciting parents' suggestions in the planning, development, and operation of the program; providing timely responses to parent recommendations; parent advisory councils; and other activities designed to enlist the support and participation of parents to aid in the instruction of their children.

(6) Parents of participating children are expected to cooperate with the local educational agency by becoming knowledgeable of the program goals and activities and by working to reinforce their children's training at home.

COORDINATION WITH ADULT EDUCATION ACT

(d) Programs of parental involvement shall coordinate, to the extent possible, with programs funded under the Adult Education Act.

ACCESSIBILITY REQUIREMENT

(e) Information, programs, and activities for parents pursuant to this section shall be provided, to the extent practicable, in a language and form which the parents understand.

Pub. L. 89-10, Title I, Sec. 1016, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 156.

Sec. 2727. **Participation of children enrolled in private schools**

GENERAL REQUIREMENTS

(a) To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall, after timely and meaningful consultation with appropriate private school officials, make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 1011(a), 1012(b)(1), 1013, 1014, and 1018(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

BYPASS PROVISION

(b)(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other concerned organizations or individuals concerning violations of this section. The Secretary shall investigate and resolve each such complaint within 120 days after receipt of the complaint.

(B) When the Secretary arranges for services pursuant to this subsection, the Secretary shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

(C) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(D) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or a designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

PRIOR DETERMINATION

(c) Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965, as in effect prior to July 1, 1988, or chapter 1 of the Education Consolidation and Improvement Act of 1981 shall remain in effect to the extent consistent with the purposes of this chapter.

CAPITAL EXPENSES

(d)(1) A local educational agency may apply to the State educational agency for payments for capital expenses consistent with the provisions of this subsection. State educational agencies shall distribute funds to local educational agencies based on the degree of need as set forth in the application. Such an application shall contain information on such capital expenses by fiscal year and shall contain an assurance that any fund received pursuant to this subsection shall be used solely for purposes of the program authorized by this chapter.

(2)(A) From the amount appropriated for the purposes of this subsection for any fiscal year, the amount which each States shall be eligible to receive shall be an amount which bears the same ratio to the amount appropriated as the number of children enrolled in private schools who were served under chapter 1 of the Education Consolidation and Improvement Act of 1981 in the State during the period July 1, 1984 through June 30, 1985, bears to the total number of such children served during such period in all States.

(B) Amounts which are not used by a State for the purposes of this subsection shall be reallocated by the Secretary among other States on the basis of need.

(3) There is authorized to be appropriated $30,000,000 for fiscal year 1988, $40,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993. Any sums appropriated under this provision shall be used for increases in capital expenses paid from funds under chapter 1 of the Education Consolidation and Improvement Act or this section subsequent to July 1, 1985, of local educational agencies in providing the instructional services required under section 557 of the Education Consolidation and Improvement Act and this section, when without such funds, services to private schoolchildren would have been or have been reduced or would be reduced or adversely affected.

(4) For the purposes of this subsection, the term 'capital expenses' is limited to expenditures for noninstructional goods and services such as the purchase, lease and renovation of real and personal property (including but not limited to mobile educational units and leasing of neutral sites or space), insurance and maintenance costs, transportation, and other comparable goods and services.

Pub. L. 89-10, Title I, Sec. 1017, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 158.

Sec. 2728. **Fiscal Requirements**

MAINTENANCE OF EFFORT

(a)(1) Except as provided in paragraph (2), a local educational agency may receive funds under this chapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The State educational agency shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) Each State educational agency may waive, for 1 fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT REGULAR NON-FEDERAL FUNDS

(b) A State educational agency or other State agency in operating its State level programs or a local educational agency may use funds received under this chapter only so as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection, no State educational agency, other State agency, or local educational agency shall be required to provide services under this chapter through use of a particular instructional method or in a particular instructional setting.

COMPARABILITY OF SERVICES

(c)(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

(2)(A) A local educational agency shall be considered to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established and implemented—

(i) a districtwide salary schedule;

(ii) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(B) Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

(3) Each educational agency shall develop procedures for compliance with the provisions of this subsection, and shall annually maintain records documenting compliance. Each State educational agency shall monitor the compliance of local educational agencies within the States with respect to the requirements of this subsection.

(4) Each local educational agency with not more than 1 building for each grade span shall not be subject to the provisions of this subsection.

(5) Each local educational agency which is found to be out of compliance with this subsection shall be subject to withholding or repayment of funds only to the amount or percentage by which the local educational agency has failed to comply.

EXCLUSION OF SPECIAL STATE AND LOCAL PROGRAM FUNDS

(d)(1)(A) For the purposes of determining compliance with the requirements of subsections (b) and (c), a local educational agency or a State agency operating a program under part D of this chapter may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children including compensatory education for educationally deprived children after prior determination pursuant to paragraphs (3) and (4) of this subsection that such programs meet the requirements of subparagraph (B).

(B) A State or local program meets the requirements of this subparagraph if it is similar to programs assisted under this part. The Secretary shall consider a State or local program to be similar to programs assisted under this part if—

(i) all children participating in the program are educationally deprived,

(ii) the program is based on similar performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

(iii) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

(iv) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of this subparagraph, and

(v) the State educational agency monitors performance under the program to assure that the requirements of this subparagraph are met.

(2)(A) For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

(i) bilingual education for children of limited English proficiency,

(ii) special education for handicapped children, and

(iii) certain State phase-in programs as described in subparagraph (B).

(B) A State education program which is being phased into full operation meets the requirements of this subparagraph if the Secretary is satisfied that—

(i) the program is authorized and governed specifically by the provisions of State law;

(ii) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(iii) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

(iv) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(v) the program will benefit all children in a particular school or grade-span within a school;

(vi) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

(vii) at all times during such phase-in period at least 50 percent of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

(viii) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

(ix) the local educational agency is separately accountable, for purposes of compliance with the clauses of this subparagraph, to the State educational agency for any funds expended for such program; and

(x) the local educational agencies carrying out the program are complying with the clauses of this subparagraph and the State educational agency is complying with applicable provisions of this paragraph.

(3) The Secretary shall make an advance determination of whether or not a State program meets the requirements of this subsection. The Secretary shall require each State educational agency to submit the provisions of State law together

with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for an advance determination. The Secretary's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Secretary.

(4) The State educational agency shall make an advance determination of whether or not a local program meets the requirements of this subsection. The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

Pub. L. 89-10, Title I, Sec. 1018, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 160.

Sec. 2729. Evaluations

LOCAL EVALUATION

(a) Each local educational agency shall—

(1) evaluate the effectiveness of programs assisted under this part, in accordance with national standards developed according to section 1435, at least once every 3 years (using objective measurement of individual student achievement in basic skills and more advanced skills, aggregated for the local educational agency as a whole) as an indicator of the impact of the program;

(2) submit such evaluation results to the State educational agency at least once during each 3-year application cycle;

(3) determine whether improved performance under paragraph (1) is sustained over a period of more than one program year.

STATE EVALUATIONS

(b) In accordance with national standards, each State educational agency shall—

(1) conduct an evaluation (based on local evaluation data collected under subsection (a) and sections 1107(b), 1202(a)(6), and 1242(d)) of the programs assisted under this chapter at least every 2 years, submit that evaluation to the Secretary and make public the results of that evaluation;

(2) inform local educational agencies, in advance, of the specific evaluation data that will be needed and how it may be collected; and

(3) collect data on the race, age, gender, and number of children with handicapping conditions served by the programs assisted under this chapter and on the number of children served by grade-level under the programs assisted under this chapter and annually submit such data to the Secretary.

SPECIAL CONDITION

(c) Projects funded under this part that serve only preschool, kindergarten, or first grade students or students in such grade levels who are included in projects serving children above such grade levels shall not be subject to the requirements of subsection (a).

Pub. L. 89-10, Title I, Sec. 1019, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 163.

Sec. 2730. State Educational Program Improvement Plan

PLAN REQUIREMENTS

(a) A State educational agency which receives funds under part A, part C, and part E of this chapter shall develop, in consultation with a committee of practitioners constituted pursuant to section 1451(b) of this chapter, a plan to ensure implementation of the provisions of this section and section 1021. Each such plan shall contain, but shall not be limited to—

(1) the objective measures and standards the State educational agency and other agencies receiving funds under part A, part C, and part E of this chapter will use to assess aggregate performance pursuant to section 1021, and may include implementation of section 1019;

(2) the means the State educational agency will use to develop joint plans with local educational agencies which have identified, pursuant to section 1021(b), schools in need of program improvement to attain satisfactory student progress, the timetable for developing and implementing such plans (within parameters defined pursuant to section 1431) and the program improvement assistance that will be provided to such schools pursuant to section 1021. Such program improvement assistance may include, but shall not be limited to, training and retraining of personnel, development of curricula that has shown promise in similar schools, replication of promising practices in effective schools models, improving coordination between programs assisted under this chapter and the regular school program, and the development of innovative strategies to enhance parental involvement.

DISSEMINATION AND AVAILABILITY OF PLAN

(b)(1) The State educational agency shall disseminate the plan developed under this subsection to all local educational agencies and other State agencies receiving funds under this chapter.

(2) The State educational program improvement plan shall be available at the State educational agency for inspection by the Secretary and may be amended by the State educational agency after consultation with a committee of practitioners when necessary.

AVAILABILITY OF FUNDS

(c) In any fiscal year for which appropriations are made pursuant to section 1405, the State educational agency shall fully implement the program improvement activities described in sections 1020 and 1021. In any fiscal year for which appropriations are not made, the State educational agency shall conduct, at a minimum, the activities required under section 1021(d), and other program improvement activities to the extent practicable.

Pub. L. 89-10, Title I, Sec. 1020, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 164.

Sec. 2731. Program improvement

LOCAL REVIEW

(a) Each local educational agency shall—

(1) conduct an annual review of the program's effectiveness in improving student performance for which purpose the local educational agency shall use outcomes developed pursuant to section 1012 and subsection (b) of this section, and make the results of such review available to teachers, parents of participating children, and other appropriate parties;

(2) determine whether improved performance under paragraph (1) is sustained over a period of more than one program year;

(3) use the results of such review and of evaluation pursuant to section 1019 in program improvement efforts required by section 1021(b); and

(4) annually assess through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

SCHOOL PROGRAM IMPROVEMENT

(b)(1) With respect to each school which does not show substantial progress toward meeting the desired outcomes described in the local educational agency's application under section 1012(a) or shows no improvement or a decline in aggregate performance of children served under this chapter for one school year as assessed by measures developed pursuant to section 1019(a) or subsection (a), pursuant to the program improvement timetable developed under sections 1020 and 1431, the local educational agency shall—

(A) develop and implement in coordination with such school a plan for program improvement which shall describe how such agency will identify and modify programs funded under this chapter for schools and children pursuant to this section and which shall incorporate those program changes which have the greatest likelihood of improving the performance of educationally disadvantaged children, including—

(i) a description of educational strategies designed to achieve the stated program outcomes or to otherwise improve the performance and meet the needs of eligible children; and

(ii) a description of the resources, and how such resources will be applied, to carry out the strategies selected, including, as appropriate, qualified personnel, inservice training, curriculum materials, equipment, and physical facilities; and, where appropriate—

(I) technical assistance;

(II) alternative curriculum that has shown promise in similar schools; (III) improving coordination between part A and part C of this chapter and the regular school program;

(IV) evaluation of parent involvement;

(V) appropriate inservice training for staff paid with funds under this chapter and other staff who teach children served under this chapter; and

(VI) other measures selected by the local educational agency; and

(B) submit the plan to the local school board and the State educational agency, and make it available to parents of children served under this chapter in that school.

(2) A school which has 10 or fewer students served during an entire program year shall not be subject to the requirements of this subsection.

DISCRETIONARY ASSISTANCE

(c) The local educational agency may apply to the State educational agency for program improvement assistance funds authorized under section 1405.

STATE ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

(d)(1) If after the locally developed program improvement plan shall have been in effect according to the timetable established under sections 1020 and 1431, the aggregate performance of children served under this chapter in a school does not meet the standards stated in subsections (a) and (b), the local educational agency shall, with the State educational agency, and in consultation with school staff and parents of participating children, develop and implement a joint plan for program improvement in that school until improved performance is sustained over a period of more than 1 year.

(2) The State educational agency shall ensure that program improvement assistance is provided to each school identified under paragraph (1).

LOCAL CONDITIONS

(e) The local educational agency and the State educational agency, in performing their responsibilities under this section, shall take into consideration—

(1) the mobility of the student population,

(2) the extent of educational deprivation among program participants which may negatively affect improvement efforts,

(3) the difficulties involved in dealing with older children in secondary school programs funded under this chapter,

(4) whether indicators other than improved achievement demonstrate the positive effects on participating children of the activities funded under this chapter, and

(5) whether a change in the review cycle pursuant to section 1019 or 1021(a)(1) or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for that particular year.

STUDENT PROGRAM IMPROVEMENT

(f) On the basis of the evaluations and reviews under sections 1019(a)(1) and 1021(a)(1), each local educational agency shall—

(1) identify students who have been served for a program year and have not met the standards stated in subsections (a) and (b),

(2) consider modifications in the program offered to better serve students so identified, and

(3) conduct a thorough assessment of the educational needs of students who remain in the program after 2 consecutive years of participation and have not met the standards stated in subsection (a).

PROGRAM IMPROVEMENT ASSISTANCE

(g) In carrying out the program improvement and student improvement activities required in subsections (a), (b), (c), and (d), local educational agencies and State educational agencies shall utilize the resources of the regional technical assistance centers and appropriate regional rural assistance programs established by section 1456 to the full extent such resources are available.

FURTHER ACTION

(h) If the State educational agency finds that, consistent with the program improvement timetable established under sections 1020 and 1431, after one year under the joint plan developed pursuant to subsection (d), including services in accordance with section 1017, a school which continues to fall below the standards for improvement stated in subsections (a) and (b) with regard to the aggregate performance of children served under part A, part C, and part E of this chapter, the State educational agency shall, with the local educational agency, review the joint plan and make revisions which are designed to improve performance, and continue to do so each consecutive year until such performance is sustained over a period of more than one year. Nothing in this section or section 1020 shall be construed to give the State any authority concerning the educational program of a local educational agency that does not otherwise exist under State law.

MUTUAL AGREEMENT

(i) Before any joint plan may be implemented under subsection (d) and subsection (h) both the local educational agency and State educational agency must approve such plan.

Pub. L. 89-10, Title I, Sec. 1021, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 165.

Part B—Even Start Programs Operated By Local Educational Agencies

Sec. 2741. **Statement of purpose**

It is the purpose of this part to improve the educational opportunities of the Nation's children and adults by integrating early childhood education and adult education for parents into a unified program to be referred to as 'Even Start.' The program shall be implemented through cooperative projects that build on existing community resources to create a new range of services.

Pub. L. 89-10, Title I, Sec. 1051, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 167.

Sec. 2742. **Program authorization**

GRANTS BY THE SECRETARY

(a) In any fiscal year in which the appropriations for this part do not equal or exceed $50,000,000, the Secretary is authorized, in accordance with the provisions of this part which are not inconsistent with the provisions of this subsection, to make grants to local educational agencies or consortia of such agencies to carry out Even Start programs.

STATE GRANT PROGRAM

(b) In any fiscal year in which the appropriations for this part equal or exceed $50,000,000, the Secretary is authorized, in accordance with the provisions of this part, to make grants to States from allocations under section 1053 to enable States to carry out Even Start programs.

DEFINITION

(c) For the purpose of this part, the term 'State' includes each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Pub. L. 89-10, Title I, Sec. 1052, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 167.

Sec. 2743. **Allocation**

RESERVATION FOR MIGRANT PROGRAMS

(a) The Secretary shall first reserve an amount equal to 3 percent of such amount for programs consistent with the purpose of this part for migrant children. Programs for which funds are reserved under this subsection shall be conducted through the Office of Migrant Education.

STATE ALLOCATION

(b) Except as provided in section 1052(a) and subsection (c) of this section, each State shall be eligible to receive a grant under this part in each fiscal year that bears the same ratio to the remainder of the amount appropriated under section 1052(b) in that fiscal year as the amount allocated under section 1005 of this Act to the local educational agencies in the

State bears to the total amount allocated to such agencies in all States.

STATE MINIMUM

(c)(1) Subject to the provisions of paragraph (2), no State shall receive less than the greater of—

(A) one-half of one percent of the amount appropriated for this part and allocated under subsection (b) for any fiscal year; or

(B) $250,000.

(2)(A) No State shall, by reason of the application of the provisions of paragraph (1)(A) of this subsection, be allotted more than—

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B), whichever is less.

(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

(i) the number of children in such State counted for purposes of this part in the fiscal year specified in subparagraph (A), multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this part for that year.

Pub. L. 89-10, Title I, Sec. 1053, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 167.

Sec. 2744. Uses of funds

IN GENERAL

(a) In carrying out the program under this part, funds made available to local educational agencies, in collaboration with, where appropriate, institutions of higher education, community-based organizations, the appropriate State educational agency, or other appropriate nonprofit organizations, shall be used to pay the Federal share of the cost of providing family-centered education programs which involve parents and children in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.

PROGRAM ELEMENTS

(b) Each program assisted under this part shall include—

(1) the identification and recruitment of eligible children;

(2) screening and preparation of parents and children for participation, including testing, referral to necessary counseling, and related services;

(3) design of programs and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—

(A) scheduling and location of service to allow joint participation by parents and children;

(B) child care for the period that parents are involved in the program provided for under this part; and

(C) transportation for the purpose of enabling parents and their children to participate in the program authorized by this part;

(4) the establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs;

(5) provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through this part (including child care staff in programs enrolling children of participants under this part on a space available basis);

(6) provision of and monitoring of integrated instructional services to participating parents and children through home-based programs; and

(7) coordination of programs assisted under this part with programs assisted under this chapter and any relevant programs under chapter 2 of this title, the Adult Education Act, the Education of the Handicapped Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

(c) Federal Share Limitation.—The Federal share under this part may be—

(1) not more than 90 percent of the total cost of the program in the first year the local educational agency receives assistance under this part,

(2) 80 percent in the second such year,

(3) 70 percent in the third such year, and

(4) 60 percent in the fourth and any subsequent such year. Funds may not be used for indirect costs. The remaining cost may be obtained from any source other than funds made available for programs under this title.

Pub. L. 89-10, Title I, Sec. 1054, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 168.

Sec. 2745. Eligible participants

Eligible participants shall be—

(1) a parent or parents who are eligible for participation in an adult basic education program under the Adult Education Act; and

(2) the child or children (aged 1 to 7, inclusive), of any individual under paragraph (1), who reside in a school attendance area designated for participation in programs under part A.

Pub. L. 89-10, Title I, Sec. 1055, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 169.

Sec. 2746. Applications

SUBMISSION

(a) To be eligible to receive a grant under this part a local educational agency shall submit an application to the

Secretary under section 1052(a) and to the State educational agency under section 1052(b) in such form and containing or accompanied by such information as the Secretary or the State educational agency, as the case may be, may require.

REQUIRED DOCUMENTATION

(b) Such application shall include documentation that the local educational agency has the qualified personnel required—

(1) to develop, administer, and implement the program required by this part, and

(2) to provide special training necessary to prepare staff for the program.

PLAN

(c) Such application shall also include a plan of operation for the program which includes—

(1) a description of the program goals;

(2) a description of the activities and services which will be provided under the program (including training and preparation of staff);

(3) a description of the population to be served and an estimate of the number of participants;

(4) if appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the program for which assistance is sought;

(5) a statement of the methods which will be used—

(A) to ensure that the programs will serve those eligible participants most in need of the activities and services provided by this part;

(B) to provide services under this part to special populations, such as individuals with limited English proficiency and individuals with handicaps; and

(C) to encourage participants to remain in the programs for a time sufficient to meet program goals; and

(6) a description of the methods by which the applicant will coordinate programs under this part with programs under chapter 1 and chapter 2, where appropriate, of this title, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs, and other relevant programs.

Pub. L. 89-10, Title I, Sec. 1056, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 169.

Sec. 2747. Award of grants

SELECTION PROCESS

(a) The Secretary of each State educational agency, as the case may be, shall appoint a review panel that will award grants on the basis of proposals which—

(1) are most likely to be successful in meeting the goals of this part;

(2) serve the greatest percentage of eligible children and parents as described in section 1055;

(3) demonstrate the greatest degree of cooperation and coordination between a variety of relevant service providers in all phases of the program;

(4) submit budgets which appear reasonable, given the scope of the proposal;

(5) demonstrate the local educational agency's ability to provide additional funding under section 1054(c);

(6) are representative of urban and rural regions of the State or of the United States, as the case may be; and

(7) show the greatest promise for providing models which may be transferred to other local educational agencies.

REVIEW PANEL

(b) A review panel shall, to the extent practicable, consist of 7 members as follows:

(1) an early childhood education professional;

(2) an adult education professional;

(3) a representative of parent-child education organizations;

(4) a representative of community-based literacy organizations;

(5) a member of a local board of education;

(6) a representative of business and industry with a commitment to education; and

(7) an individual involved in the implementation of programs under this chapter within the State.

The panel shall contain members described in paragraphs (1), (2), (6), and (7).

EQUITABLE DISTRIBUTION OF ASSISTANCE

(c) In approving grants under this part under section 1052(a), the Secretary shall assure an equitable distribution of assistance among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

DURATION

(d)(1) Grants may be awarded for a period not to exceed 4 years. In any application from a local educational agency for a grant to continue a project for the second, third, or fourth fiscal year following the first fiscal year in which a grant was awarded to such local educational agency, the Secretary or the State educational agency, as the case may be, shall review the progress being made toward meeting the objectives of the project. The Secretary or the State educational agency, as the case may be, may refuse to award a grant if the Secretary or such agency finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

(2) The Secretary shall establish criteria for carrying out the provisions of paragraph (1) in the transition fiscal year

whenever the provisions of section 1052(b) apply to authorized State grant programs.

Pub. L. 89-10, Title I, Sec. 1057, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 170.

Sec. 2748. Evaluation

INDEPENDENT ANNUAL EVALUATION

(a) The Secretary shall provide for the annual independent evaluation of programs under this part to determine their effectiveness in providing—

(1) services to special populations;

(2) adult education services;

(3) parent training;

(4) home-based programs involving parents and children,

(5) coordination with related programs; and

(6) training of related personnel in appropriate skill areas.

CRITERIA

(b)(1) Each evaluation shall be conducted by individuals not directly involved in the administration of the program or project operated under this part. Such independent evaluators and the program administrators shall jointly develop evaluation criteria which provide for appropriate analysis of the factors under subsection (a). When possible, each evaluation shall include comparisons with appropriate control groups.

(2) In order to determine a program's effectiveness in achieving its stated goals, each evaluation shall contain objective measures of such goals and, whenever feasible, shall obtain the specific views of program participants about such programs.

REPORT TO CONGRESS AND DISSEMINATION

(c) The Secretary shall prepare and submit to the Congress a review and summary of the results of such evaluations not later than September 30, 1993. The annual evaluations shall be submitted to the National Diffusion Network for consideration for possible dissemination.

Pub. L. 89-10, Title I, Sec. 1058, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 171.

Sec. 2749. Authorization of appropriations

There are authorized to be appropriated for the purposes of this part $50,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

Pub. L. 89-10, Title I, Sec. 1059, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 172.

Part D—Programs Operated By State Agencies

SUBPART 2—PROGRAMS FOR HANDICAPPED CHILDREN

Sec. 2791. Amount and eligibility

ELIGIBILITY FOR GRANT

(a)(1) A State educational agency shall be eligible to receive a grant under this subpart for any fiscal year for programs (as defined in sections 1222 and 1223) for handicapped children (as defined in paragraph (2)(B)).

(2) For the purpose of this subpart—

(A) 'children' includes infants and toddlers described in part H of the Education of the Handicapped Act, as appropriate, and

(B) 'handicapped children' means children who by reason of their handicap require special education and related services, or in the case of infants and toddlers, require early intervention services and who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities.

STATE EDUCATIONAL AGENCY APPLICATION

(b) In order to receive a grant under this subpart, a State educational agency shall submit an application to the Secretary which provides assurances that—

(1) all handicapped children (other than handicapped infants and toddlers) in the State participating in programs and projects funded under this subpart receive a free appropriate public education and such children and such children's parents are provided all the rights and procedural safeguards under part B of the Education of the Handicapped Act and this subpart and that all handicapped infants and toddlers in the State participating under this subpart receive early intervention services and such infants and toddlers and their families are provided the rights and procedural safeguards under part H of such Act;

(2) programs and projects receiving assistance under this subpart are administered in a manner consistent with this subpart, subpart 2 of part F, part B of the Education of the Handicapped Act, and as determined by the Secretary to be appropriate, part H of the Education of the Handicapped Act, including the monitoring by such agency of compliance under paragraph (1);

(3) programs and projects under this subpart will be coordinated with services under the Education of the Handicapped Act;

(4) for fiscal year 1991, and each subsequent fiscal year, the State educational agency will administer the program authorized by this subpart through the State office responsible for administering part B of the Education of the Handicapped Act;

(5) the agency will report annually to the Secretary—

(A) the number of children served under this subpart for each disability and age category as described in part B of the Education of the Handicapped Act;

(B) the number of children served under this subpart in each of the educational placements described in section 618(b)(2) of the Education of the Handicapped Act (and will report separately State-operated and State-supported programs and local educational agency programs for children previously served in such State programs); and

(C) on the uses of funds and the allocation of such funds for such uses under this subpart; and

(6) the agency will report to the Secretary such other information as the Secretary may reasonably request.

AMOUNT OF GRANT

(c)(1) Except as provided in subsection (e) and section 1291, the grant which a State educational agency (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States), multiplied by the number of handicapped children, from birth through 21, enrolled on December 1, as determined by the Secretary, in programs or schools for handicapped infants, toddlers and children operated or supported by a State agency which—

(i) is directly responsible for providing free public education for handicapped children (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency); or

(ii) is directly responsible for providing early intervention services for handicapped infants or toddlers (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency)),

in the most recent fiscal year for which satisfactory data are available. The State educational agency shall distribute such funds to the appropriate State agency on the basis of the December 1 child count by distributing an equal amount for each child counted.

(2) For each fiscal year., the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. Except as provided in subsection (e), a grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such handicapped children in the Commonwealth of Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 percent of the average per pupil expenditure in the United States.

COUNTING OF CHILDREN TRANSFERRING FROM STATE TO LOCAL PROGRAMS

(d) In any case in which a child described in sections 1225(1)(A) and 225(1)(B)(i) leaves an educational program for handicapped children operated or supported by a State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (c) if—

(1) the child was receiving and continues to receive a free appropriate public education; and

(2) the State educational agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State educational agency under this section which are attributable to such child, to be used for the purpose set forth in section 1223.

SPECIAL REQUIREMENT

(e) The State educational agency may count handicapped children aged 3 to 5, inclusive, in a State only if such State is eligible for a grant under section 619 of the Education of the Handicapped Act.

Pub. L. 89-10, Title I, Sec. 1221, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 179.

Sec. 2792. Program requirements

GENERAL REQUIREMENTS

(a) A State educational agency shall use the payments made under this subpart for programs and projects (including the acquisition of equipment) which are designed to supplement the special education needs of handicapped children (other than handicapped infants and toddlers) or the early intervention needs of handicapped infants and toddlers. Such programs and projects shall be administered in a manner consistent with this subpart, subpart 2 of part F, part B of the Education of the Handicapped Act, and, as determined by the Secretary to be appropriate, part H of the Education of the Handicapped Act.

SERVICES

(b) Funds under this subpart shall be used to supplement the provision of special education and related services for handicapped children (other than handicapped infants and toddlers) or early intervention services for handicapped infants and toddlers.

DEMONSTRATION OF BENEFIT

(c) Recipients of funds under this subpart shall collect and maintain such evaluations and assessments as may be necessary to demonstrate that the programs and projects were beneficial to the children serviced.

Pub. L. 89-10, Title I, Sec. 1222, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 181.

Sec. 2793. Uses of funds

GENERAL RULE

(a) Programs, and projects authorized under this subpart may include, but are not limited to—

(1) services provided in early intervention, preschool, elementary, secondary, and transition programs;

(2) acquisition of equipment and instructional materials;

(3) employment of special personnel;

(4) training and employment of education aides;

(5) training in the use and provision of assistive devices and other specialized equipment;

(6) training of teachers and other personnel;

(7) training of parents of handicapped children;

(8) training of nonhandicapped children to facilitate their participation with handicapped children in joint activities;

(9) training of employers and independent living personnel involved in assisting the transition of handicapped children from school to the world of work and independent living;

(10) outreach activities to identify and involve handicapped children and their families more fully in a wide range of educational and recreational activities in their communities; and

(11) planning for, evaluation of, and dissemination of information regarding such programs and projects assisted under this subpart.

PROHIBITION

(b) Programs and projects authorized under this subpart may not include the construction of facilities.

Pub. L. 89-10, Title I, Sec. 1223, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 182.

Sec. 2794. Service and program applications

APPLICATION REQUIRED

(a) A State agency or local educational agency may receive a grant under this subpart for any fiscal year if it has on file with the State educational agency an application which describes the services, programs, and projects to be conducted with such assistance for a period of not more than 3 years, and each such application has been approved by the State educational agency. Any State educational agency operating programs or projects under this subpart shall prepare a written description of such programs and projects in accordance with subsections (b) and (c).

REQUIREMENTS

(b) At a minimum each such application shall—

(1) indicate the number of children to be served;

(2) specify the number of children to be served for each disability and age category as described in part B of the Education of the Handicapped Act;

(3) describe the purpose or purposes of the project and the method or methods of evaluating the effectiveness of the services, projects, or program;

(4) specify the services to be provided with the funds furnished under this subpart; and

(5) include other information the Secretary or State educational agency may request.

APPLICATION ASSURANCES

(c) Any such application shall provide assurances that—

(1) all handicapped children in the State (other than handicapped infants and toddlers) participating in programs and projects funded under this subpart receive a free appropriate public education and such children and such children's parents are provided all the rights and procedural safeguards under part B of the Education of the Handicapped Act and this subpart and that all handicapped infants and toddlers in the State participating under this subpart receive early intervention services and such infants and toddlers and their families are provided the rights and procedural safeguards under part H of such Act;

(2) services, programs, and projects conducted under this subpart are of sufficient size, scope, and quality to give reasonable promise toward meeting the special educational and early intervention needs of children to be served;

(3) funds made available under the subpart will supplement, not supplant State and local funds in accordance with section 1018(b);

(4) the agency will maintain its fiscal effort in accordance with section 1018(a);

(5) the agency will conduct such evaluations and assessments as may be necessary to demonstrate that the programs and projects are beneficial to the children served;

(6) the parents of children to be served with funds under this subpart are provided an opportunity to participate in the development of its project application; and

(7) the agency will comply with all reporting requirements in a timely manner.

LETTER OF REQUEST

(d) The State educational agency may accept, in lieu of a project application, a letter of request for payment from a local educational agency, if the local agency intends to serve fewer than 5 children with its payment. In such a letter the agency shall include an assurance that the payment will be used to supplement the provision of special education and related services.

Pub. L. 89-10, Title I, Sec. 1224, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 182.

Sec. 2795. Eligible children

The children eligible for services under this subpart are—

(1) Those handicapped children from birth to 21, inclusive, who—

(A) the State is directly responsible for providing special education or early intervention services to (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency), and

(B)(i) are participating in a State-operated or State-supported school or program for handicapped children (including schools and programs operated under contract or other arrangement with a State agency), or

(ii) previously participated in such a program and are receiving special education or early intervention services from local educational agencies; and

(2) other handicapped children, if children described in paragraph (1) have been fully served.

Pub. L. 89-10, Title I, Sec. 1225, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 183.

Sec. 2796. **Federal monitoring requirement**

Whenever the Secretary conducts monitoring visits under part B of the Education of the Handicapped Act, the Secretary shall monitor the program authorized by this subpart, if applicable.

Pub. L. 89-10, Title I, Sec. 1226, as added Pub. L. 100-297, Title I, Sec. 1001, Apr. 28, 1988, 102 Stat. 184.

REHABILITATION ACT OF 1973

(Selected Sections)

29 U.S.C. Secs. 706(8), 794, 794a, 794b

Sec.	
706(8)	Definitions—Individual with Handicaps
794	Nondiscrimination under Federal grants and programs; promulgation of rules and regulations
794a	Remedies and attorneys' fees
794b	Removal of architectural, transportation, or communication barriers; technical and financial assistance; compensation of experts or consultants; authorization of appropriations

REHABILITATION ACT OF 1973

(Selected Sections)

29 U.S.C. Secs. 706(8), 794, 794a, 794b

Sec. 706(8). Definitions—Individual with Handicaps

(8)(A) Except as otherwise provided in subparagraph (B), the term "individual with handicaps" means any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to subchapters I and III of this chapter.

(B) Subject to the second sentence of this subparagraph, the term "individual with handicaps" means, for purposes of subchapters IV and V of this chapter, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a recordof such an impairment, or (iii) is regarded as having such an impairment. For purposes of sections 793 and 794 of this title as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual-from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(C) For the purpose of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

Pub. L. 93-112, § 7, Sept. 26, 1973, 87 Stat. 359; Pub. L. 93-516, Title I, § 111(a), Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, Title I, § 111(a), Nov. 21, 1974, 89 Stat. 2-5, as amended Pub. L. 95-602, Title I, § 122(a)(4)-(8), Nov. 6, 1978, 92 Stat. 2984, 2985; Pub. L. 98-221, Title I, § 101, Feb. 22, 1984, 98 Stat. 17; Pub.L. 99-506, Title I, § 103(a)-(c)(1), (d)-(h)(1), (i), (j), Title X, §§ 1001(a)(3), 1002(a), Oct. 21, 1986, 100 Stat. 1809-1811, 1841, 1844; Pub.L. 100-259, § 9, Mar. 22, 1988, 102 Stat. 31; Pub.L. 100-630, Title II, § 201(c), Nov. 7, 1988, 102 Stat. 3303.

Sec. 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations.

(a) Promulgation of rules and regulations. No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees

(b) "Program or activity" defined. For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or otherinstrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2891(12) of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partners privateorganization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business ofproviding education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers; exception—

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

Pub. L. 93-112, Title V, § 504, Sept. 26, 1973, 87 Stat. 394, as amended Pub. L. 95-602, Title I, §§ 119, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987; Pub.L. 99-506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub.L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100-630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312.

Sec. 794a. Remedies and attorneys' fees.

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Pub.L. 93-112, Title V, § 505, as added Pub.L. 95-602, Title I, § 120, Nov. 6, 1978, 92 Stat. 2982.

Sec. 794b. Removal of architectural, transportation, or communication barriers; technical and financial assistance; compensation of experts or consultants; authorization of appropriations

(a) The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance—

(1) to persons operating rehabilitation facilities; and

(2) with the concurrence of the Board established by section 792 of this title, to any public or nonprofit agency, institution, or organization; for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Board under this paragraph shall reflect its consideration of the cost studies carried out by States under section 792(c)(1) of this title.

(b) Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of basic pay payable for grade GS-18 of the General Schedule, under section 5332 of Title 5, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(c) The Secretary, with the concurrence of the Board and the President, may provide, directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of removing architectural, transportation, and communication barriers. No assistance may be provided under this paragraph until a study demonstrating the need for such assistance has been conducted and submitted under section 792(h)(2) of this title.

(d) In order to carry out this section, there are authorized to be appropriated such sums as may be necessary.

Pub. L. 93-112, Title V, § 506, as added Pub. L. 95-602, Title I, § 120, Nov. 6, 1978, 92 Stat. 2983, as amended Pub.L. 100-630, Title II, § 206(e)(1), (4), Nov. 7, 1988, 102 Stat. 3312.

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT

42 U.S.C. Secs. 6000-6083

CHAPTER 75—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

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DEVELOPMENTAL DISABILITIES AND BILL OF RIGHTS ACT

42 U.S.C. Secs. 6000-6083

CHAPTER 75—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Subchapter I—General Provisions

Sec. 6000. Findings and purpose

(a) The Congress finds that—

The Congress finds that—

(1) there are more than two million persons with developmental disabilities in the United States;

(2) persons whose disabilities occur during their developmental period frequently have severe disabilities which are likely to continue indefinitely;

(3) notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences;

(4) family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with necessary support services;

(5) persons with developmental disabilities and their families often require specialized lifelong assistance to be provided in a coordinated manner by many agencies and others in order to eliminate barriers for such persons and to meet the needs of such persons;

(6) generic service agencies and agencies providing specialized services to persons with disabilities sometimes overlook, inappropriately address the needs of, or exclude persons with developmental disabilities in their planning and delivery of services;

(7) public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and

(8) it is in the national interest to offer persons with developmental disabilities the opportunity, to the maximum extent feasible, to make decisions for themselves and to live in typical homes and communities where they can exercise their full rights and responsibilities as citizens.

(b) The purposes of this chapter are—

(1) to provide assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity, and integration into the community;

(2) to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential; and

(3) to make grants to support a system in each State to protect the legal and human rights of persons with developmental disabilities.

Pub. L. 88-164, Title I, Sec. 101, Pub. L. 95-602, Title V, Sec. 502, Nov. 6, 1978, 92 Stat. 3004; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2662; amended Pub. L. 100-146, Title I, Sec. 101, Oct. 29, 1987, 101 Stat. 840.

Sec. 6001. Definitions

For purposes of this chapter:

(1) The term "State" includes Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

(2) The term "nonprofit" means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private share holder or individual.

(3) The term "construction" includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation, and recreation facilities); including architect's fees, but excluding the cost of offsite improvements and the cost of the acquisition of land.

(4) The term "title", when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project.

(5) The term "developmental disability" means a severe, chronic disability of a person which—

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age twenty-two;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(6) The term "independence" means the extent to which persons with developmental disabilities exert control and choice over their own lives.

(7) The term "productivity" means—

(A) engagement in income-producing work by a person with developmental disabilities which is measured through improvements in income level, employment status, or job advancement, or

(B) engagement by a person with developmental disabilities in work which contributes to a household or community.

(8) The term "integration" means—

(A) the—

(i) use by persons with developmental disabilities of the same community resources that are used by and available to other citizens, and

(ii) participation by persons with developmental disabilities in the same community activities in which nondisabled citizens participate, together with regular contact with nondisabled citizens, and

(B) the residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nondisabled citizens in their communities.

(9) The term "priority area activities" includes, with respect to Federal priority areas or a State priority area—

(A) activities to increase the capacities and resources of public and private nonprofit entities and others to develop a system for providing specialized services or special adaptations of generic services or other assistance which responds to the needs and capabilities of persons with developmental disabilities and their families and to enhance coordination among entities;

(B) the—

(i) conduct of studies and analyses;

(ii) gathering of information;

(iii) development of model policies, and procedures; and

(iv) presentation of information, models, findings, conclusions, and recommendations to policymakers; in order to enhance opportunities for persons with developmental disabilities, including the enhancement of a system for providing or making available specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

(C) the demonstration of new ways to enhance the independence, productivity, and integration into the community of persons with developmental disabilities, such as model demonstrations which, if successful, will be made generally applicable through sources of funding other than funding under this chapter, including new ways to enhance specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

(D) outreach activities for persons with developmental disabilities to enable such persons to obtain assistance in Federal priority areas or a State priority area, including access to specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

(E) the training of persons with developmental disabilities, family members of such persons, and personnel, including professionals, paraprofessionals, students, and volunteers, to obtain access to, or to provide, services and other assistance in the area, including specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons; and

(F) similar activities designed to prevent developmental disabilities from occurring or to expand and enhance the independence, productivity and integration into the community of persons with developmental disabilities through the State on a comprehensive basis.

(10) The term "Federal priority areas" means community living activities, employment activities, child development activities, and case management activities.

(11) The term "State priority area" means priority area activities in an area considered essential by the State Planning Council.

(12) The term "community living activities" means such priority area activities as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements and supports in the community (including nonfinancial supports and family support services).

(13) The term "employment activities" means such priority area activities as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings.

(14) The term "supported employment" means competitive work in integrated work settings—

(A) for persons with developmental disabilities for whom competitive employment has not traditionally occurred; or

(B) for persons for whom competitive employment has been interrupted or intermittent as a result of a developmental disability, and who because of their disability need on-going support services to perform such work.

(15) The term "child development activities" means such priority area activities as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services.

(16) The term "case management activities" means priority area activities to establish a potentially life-long, goal-oriented process for coordinating the range of assistance needed by persons with developmental disabilities and their families, which is designed to ensure accessibility, continuity of supports and services, and accountability and to ensure that the maximum potential of persons with developmental disabili-

ties for independence, productivity, and integration into the community is attained.

(17) The term "satellite center" means a public or private nonprofit entity which—

(A)(i) is affiliated with one or more university affiliated programs;

(ii) functions as a community or regional extension of such university affiliated program or programs in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available; and

(iii) may engage in the activities described in subparagraph (A), (B), or (C) of paragraph (18); or

(B) is affiliated with one or more university affiliated programs and which provides for at least—

(i) interdisciplinary training for personnel concerned with the provision of direct or indirect services to persons with developmental disabilities; and

(ii) dissemination of findings relating to the provision of services to persons with developmental disabilities.

(18) The term "university affiliated program" means a program operated by a public or nonprofit private entity which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

(A) Interdisciplinary training for personnel concerned with developmental disabilities, including parents of persons with developmental disabilities, professionals, paraprofessionals, students, and volunteers, which is conducted at a facility and through outreach activities.

(B) Demonstration of—

(i) exemplary services relating to persons with developmental disabilities in settings which are integrated in the community; and

(ii) technical assistance to generic and specialized agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.

(C)(i) Dissemination of findings relating to the provision of services under subparagraph (B) of this paragraph, and (ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

(19) The term "Secretary" means the Secretary of Health and Human Services.

(20) The term "State Planning Council" means a State Planning Council established under section 6024 of this title.

(21) The term "family support services" means services designed to—

(A) strengthen the family's role as primary caregivers;

(B) prevent inappropriate out-of-the-home placement and maintain family unity; and

(C) reunite families with members who have been placed out of the home. Such term includes respite care, personal care, parent training and counseling, support for elderly parents, and other individualized services.

(22) The term "assistive technology" means the systematic application of technology, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, persons with developmental disabilities in areas including education, employment, supported employment, transportation, and independent living and other community living arrangements.

(23) The term "early intervention services" means services provided to infants, toddlers, young children, and the families of such to—

(A) identify, assess, and treat developmental disabilities at the earliest possible time to prevent more serious disability;

(B) ensure the maximum growth and development of a person within the above classes who has a developmental disability; and

(C) assist families in raising a child with a developmental disability.

Pub. L. 88-164, Title I, Sec. 102; Pub. L. 94-103, Title I, Sec. 125, Oct. 4, 1975, 89 Stat. 496; Pub. L. 95-602, Title V, Sec. 503(a), (b)(1), (c)-(f), Nov. 6, 1978, 92 Stat. 3004-3006; Pub. L. 96-88, Title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695; as amended Pub. L. 98-221, Title III, Sec. 301, Feb. 22, 1984, 98 Stat. 34; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2663; Pub. L. 100-146, Title I, Sec. 102, Oct. 29, 1987, 101 Stat. 841.

Sec. 6002. Federal share

SUBCHAPTER II; PERCENTAGE LIMITATION

(a) The Federal share of all projects in a State supported by an allotment to the State under subchapter II of this chapter may not exceed 75 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, except that in the case of projects located in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects, as determined by the Secretary.

SUBCHAPTER IV; PERCENTAGE LIMITATION

(b) The Federal share of any project to be provided through grants under subchapter IV of this chapter may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, except that if the project is located in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs as so determined.

NON-FEDERAL SHARE; MEDIUM OF PAYMENT

(c) The non-Federal share of the cost of any project assisted by a grant or allotment under this chapter may be provided in kind.

STATE EXPENDITURES

(d) For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of a State or by a nonprofit private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under subchapter II of this chapter or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under subchapter IV of this chapter.

Pub. L. 88-164, Title I, Sec. 103; Pub. L. 94-103, Title I, Sec. 125, Oct. 4, 1975, 89 Stat. 498; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2667.

Sec. 6003. Records and audit

RECORDKEEPING REQUIREMENT

(a) Each recipient of assistance under this chapter shall keep such records as the Secretary shall prescribe, including (1) records which fully disclose (A) the amount and disposition by such recipient of the proceeds of such assistance, (B) the total cost of the project or undertaking in connection with which such assistance is given or used, and (C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

ACCESS FOR AUDIT; SECRETARY; COMPTROLLER GENERAL

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this chapter that are pertinent to such assistance.

Pub. L. 88-164, Title I, Sec. 104; Pub. L. 94-103, Title I, Sec. 125, Oct. 4, 1975, 89 Stat. 498; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2667.

Sec. 6004. Recovery of expenditures under certain conditions; lien

If any facility with respect to which funds have been paid under subchapter II or IV of this chapter shall, at any time within twenty years after the completion of construction—

(1) be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity, or

(2) cease to be a public or nonprofit facility for persons with developmental disabilities,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment. The Secretary, in accordance with regulations prescribed by the Secretary, may, upon finding good cause therefor, release the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities.

Pub. L. 88-164, Title I, Sec. 105; Pub. L. 94-103, Title I, Sec. 125, Oct. 4, 1975, 89 Stat. 498; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2667.

Sec. 6005. State control of operations

Except as otherwise specifically provided, nothing in this chapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under this chapter.

Pub. L. 88-164, Title I, Sec. 106; Pub. L. 94-103, Title I, Sec. 125, Oct. 4, 1975, 89 Stat. 498; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2668.

Sec. 6006. Reports; State planning council; Secretary

STATE PLANNING COUNCIL; CONTENTS

(a) By January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the state under subchapter II of this chapter for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain—

(1) a description of such activities and the accomplishments resulting from such activities;

(2) a comparison of such accomplishments with the goals, objectives, and proposed activities specified by the State in the State plan submitted under section 6022 of this title for such fiscal year;

(3) an accounting of the manner in which funds paid to the State under subchapter II of this chapter for a fiscal year were expended;

(4) a description of the State Planning Council's response to significant actions taken by the State with respect to each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1396a(a)(31)(B) of title 42 with respect to any intermediate care facility for the mentally retarded in such State; and

(5) a description of the progress made in the State in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, and advocacy for, persons with developmental disabilities which are attributable to physical

impairment, mental impairment, or a combination of physical and mental impairments, including any other subpopulation of persons with developmental disabilities (including minorities) that the State Planning Council may identify under sections 6022(b)(3) and 6022(f) of this title.

PROTECTION AND ADVOCACY SYSTEMS

(b) By January 1 of each year, each protection and advocacy system established in a State pursuant to subchapter III of this chapter shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year.

SECRETARY; PRESIDENT, CONGRESS AND NATIONAL COUNCIL ON THE HANDICAPPED

(c)(1) By April 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on the Handicapped a report which describes—

(A) the activities and accomplishments of programs supported under subchapters II, III, IV and V of this chapter;

(B) the progress made in States in improving the independence, productivity, and integration into the community of persons with developmental disabilities and any activities or services needed to improve such independence, productivity, and integration;

(C) the progress made by States in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, and advocacy for, persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments, including any other subpopulation of persons with developmental disabilities (including minorities) that the State Planning Council may identify under sections 6022(b)(3) and 6022(f) of this title;

(D) the significant Federal policies that impact on the ability of States to address the needs of persons with developmental disabilities attributable to physical impairments, mental impairments, or a combination of mental and physical impairments; and

(E) the number of meetings held by the interagency committee established under section 6007(b) of this title during the period for which the report is made, which agencies were represented at each such meeting, and the accomplishments of the interagency committee in comparison to the goals and objectives of such committee.

(2) In preparing the report required by this subsection, the Secretary shall use and include information submitted to the Secretary in the reports required under subsections (a) and (b) of this section.

Pub. L. 88-164, Title I, Sec. 107; Pub. L. 94-103, Title I, Sec. 125, Oct. 4, 1975, 89 Stat. 499; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2668; amended Pub. L. 100-146, Title I, Sec. 103, Oct. 29, 1987, 101 Stat. 844.

Sec. 6007. Responsibilities of Secretary

PROMULGATION OF REGULATIONS

(a) The Secretary, not later than one hundred eighty days after the date of enactment of any Act amending the provisions of this chapter, shall promulgate such regulations as may be required for the implementation of such amendments.

INTERAGENCY COMMITTEE

(b) Within ninety days after October 19, 1984, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the Administration for Developmental Disabilities of the Department of Health and Human Services, the Office of Special Education and Rehabilitative Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for persons with developmental disabilities.

Pub. L. 88-164, Title I, Sec. 108; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2669.

Sec. 6008. Employment of handicapped individuals

As a condition of providing assistance under this chapter, the Secretary shall require that each recipient of such assistance take affirmataive action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation Act of 1974 [29 U.S.C. 701 et seq.] which govern employment (1) by state rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.

Pub. L. 88-164, Title I, Sec. 109, formerly Sec. 139; as added Pub. L. 91-517, Title I, Sec. 101(b), Oct. 30, 1970, 84 Stat. 1323; and renumbered and amended Pub. L. 94-103, Title I, Sec. 127, Oct. 4, 1975, 89 Stat. 500; Pub. L. 95-602, Title V, Sec. 505, Nov. 6, 1978, 92 Stat. 3007; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2669.

Sec. 6009. Congressional finding regarding rights of the developmentally disabled

Congress makes the following findings respecting the rights of persons with developmental disabilities:

(1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitiation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

(3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—

(A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

(B) does not meet the following minimum standards:

(i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.

(ii) Provision to such persons of appropriate and sufficient medical and dental services.

(iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.

(iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those serve, and—

(A) in the case of residential programs serving persons in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 Fed. Reg. pt. II), as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(B) in the case of other residential programs for persons with developmental disabilities, which assure that care is appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(C) in the case of nonresidential programs, which assure the care provided by such programs is appropriate to the persons served by the programs.

The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

Pub. L. 88-164, Title I, Sec. 110; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2669.

Subchapter II—Federal Assistance For Planning Priority Area Activities For Persons With Developmental Disabilities

Sec. 6021. Purpose

The purpose of this subchapter is to provide payments to States to assist in the development of a comprehensive system and a coordinated array of services and other assistance for persons with developmental disabilities through the conduct of, and appropriate planning and coordination of, administrative activities, Federal priority activities, and a State priority activity, in order to support persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community.

Pub. L. 88-164, Title I, Sec. 121; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2670; amended Pub. L. 100-146, Title II, Sec. 201(a), Oct. 29, 1987, 101 Stat. 845.

Sec. 6022. State plans

SECRETARY; SUBMISSION OF PLAN TO; APPROVAL BY

(a) Any State desiring to take advantage of this subchapter must have a State plan submitted to and approved by the Secretary under this section.

PLAN REQUIREMENTS AND CONTENTS

(b) In order to be approved by the Secretary under this section, a State plan must meet the following requirements:

(1)(A) The plan must provide for the establishment of a State Planning Council in accordance with section 6024 of this title.

(B) The plan must designate the State agency which shall administer or supervise the administration of the State plan (hereafter in this subchapter referred to as the "designated State agency"). Except as provided in subsection (e) of this section, the designated State agency may be—

(i) the State Planning Council required under subparagraph (A) if such Council may be the designated State agency under the laws of the State;

(ii) a State agency that does not provide or pay for services made available to persons with developmental disabilities; or

(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

(C) The plan must provide that the State agency designated under subparagraph (B) will keep such records and afford such access thereto as the Secretary or the State Planning Council finds necessary.

(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this subchapter.

(2) The plan must—

(A) set out the specific objectives to be achieved under the plan and a listing of the programs, activities, and resources to be used to meet such objectives;

(B) set forth the non-Federal share that will be required in carrying out each such objective and program;

(C) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans or federally assisted State programs that the State conducts and in which persons with developmental disabilities are eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, aging, programs for children with special health care needs, housing, comprehensive health and mental health, and such other plans as the Secretary may specify, and how funds allotted to the State in accordance with section 6025 of this title will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities who are eligible for Federal assistance under such other State programs;

(D) for each fiscal year, assess and describe the extent and scope of the priority services being or to be provided under the plan in the fiscal year; and

(E) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

(3) The plan must describe a process and timetable for the completion, by January 1, 1990, by the State Planning Council in the State, of the reviews, analyses, and final report described in subsection (f) of this section.

(4) The plan must contain or be supported by assurances satisfactory to the Secretary that—

(A) the funds paid to the State under section 6025 of this title will be used to make a significant contribution toward enhancing the independence, productivity, and integration into the community of persons with developmental disabilities through agencies in the various political subdivisions of the State;

(B) part of such funds will be made available by the State to public or nonprofit private entities;

(C) not more than 25 percent of such funds will be allocated to the agency designated under subsection (b)(1)(B) of this section for the provision of services by such agency;

(D) such funds paid to the State under section 6025 of this title will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

(E) there will be reasonable State financial participation in the cost of carrying out the State plan.

(5)(A) The plan must provide for the examination, not less often than once every three years, of the provision, and the need for the provision, in the State of the four Federal priority areas and the State priority area. Such examination shall be made consistent with subparagraph (B).

(B) The plan must provide for the review and revision, not less often than once every three years, of the comprehensive Statewide plan to ensure the existence of appropriate planning, financial support and coordination, and to otherwise appropriately address, on a Statewide and comprehensive basis, urgent needs in the State for the provision of services for persons with developmental disabilities and the families of such persons. Such review and revision, and examination under subparagraph (A), shall take into account the reviews and analyses conducted, and the report prepared, under subsection (f) of this section, and shall, at a minimum, include—

(i) an analysis of such priority areas in relation to limited support or lack of support for persons with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) an analysis of criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may be causing persons with developmental disabilities to be excluded from receiving such services;

(iii) an analysis of services, assistive technology, or knowledge which may be unavailable to assist persons with developmental disabilities;

(iv) an analysis of existing and projected fiscal resources;

(v) an analysis of any other issues identified by the State Planning Council; and

(vi) the formulation of objectives in both policy reform and service demonstration to address the issues described in clauses (i) through (v) for all subpopulations of persons with developmental disabilities which may be identified by the State Planning Council.

(C) The plan must be developed after consideration of the data collected by the State education agency under section 1418(b)(3) of title 20.

(D)(i) The plan must provide that not less than 65 percent of the amount available to the State under section 6025 of this title will be expended for activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and a State priority area, the conduct of the analyses specified in clauses (i) through (v) of subparagraph (B), and the implementation of paragraph (3) and subsection (f) of this section.

(ii) The plan must provide that the remainder of the amount available to the State from allotments under section 6025 of this title (after making the expenditures required by clause (i) of this paragraph) shall be used for the planning, coordination, and administration of priority area activities for, and the advocacy for, persons with developmental disabilities.

(E) The plan must provide that special financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

(6)(A)(i) The plan must provide that programs, and the facilities in which they are operated, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

(ii) The plan must provide satisfactory assurances that buildings used in connection with the programs assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (known as the Architectural Barriers Act of 1968 [42 U.S.C. 4151 et seq.]).

(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 6023 of this title (relating to habilitation plans).

(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this part will be protected consistent with section 6009 of this title (relating to rights of the developmentally disabled).

(D) The plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this chapter of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

(E) The plan must provide assurances that the State will provide the State Planning Council with a copy of each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1396a(a)(31)(B) of this title with respect to any intermediate care facility for the mentally retarded in such State within 30 days after the completion of each such report or plan.

(7)(A) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.] and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

(B) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(8) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this subchapter.

APPROVAL; FINAL DISAPPROVAL; NOTICE AND HEARING

(c) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b) of this section. The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

ADMINISTRATION OF STATE PLAN; EXPENDITURES; PAID FROM ALLOTMENT; LIMITATION; CONDITION

(d)(1) At the request of any State, a portion of any allotment or allotments of such State under this subchapter for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under this section; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or $50,000, whichever is less, shall be available for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) of this section for the administration or supervision of the administration of the State plan. Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from the State sources for such year for administration of the State plan approved under this section not less than the total amount expended for such purposes from such sources during the previous fiscal year.

CONTINUED DESIGNATION OF PREVIOUSLY DESIGNATED STATE AGENCY

(e)(1) If a State agency that provides or pays for services for persons with developmental disabilities was a designated State agency for purposes of this subchapter on October 29, 1987, and the Governor of the State determines, before June 30, 1988, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this subchapter.

(2) The determination of the Governor of a State under paragraph (1) shall be at the discretion of the Governor and shall be made by the Governor after the Governor has considered the comments of the general public and the non-State agency members of the State Planning Council with respect to the designation of such State agency, and after the Governor has made an independent assessment of the impact that the designation of such agency has on the ability of the State Planning Council to serve as an advocate for persons with developmental disabilities.

(3) If the Governor of a State determines not to retain the designation of a State agency in effect on October 29, 1987, the Governor shall, by October 1, 1990, designate

another agency as the State agency in accordance with the requirements of subsection (b)(1)(B) of this section.

(4) After October 29, 1987, any designation of a State agency shall be made in accordance with the requirements of subsection (b)(1)(B) of this section.

COMPREHENSIVE REVIEW AND ANALYSIS OF SERVICES BY STATE PLANNING COUNCIL; REPORTS; SUMMARY OF REPORTS TO CONGRESS

(f)(1) Each State Planning Council shall conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all State agencies (including agencies which provide public assistance) which affect or which potentially affect the ability of persons with developmental disabilities to achieve the goals of independence, productivity, and integration into the community, including persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

(2) Each State Planning Council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from Federal and State funds by each of the State agencies (including agencies providing public assistance) responsible for performing functions for, and providing services to, all persons with developmental disabilities in the State. Such review and analysis shall be based upon a survey of a representative sample of persons with developmental disabilities receiving services from each such agency, and if appropriate, shall include their families.

(3) Each State Planning Council shall convene public forums, after the provision of notice within the State, in order to—

(A) present the findings of the reviews and analyses prepared under paragraphs (1) and (2);

(B) obtain comments from all interested persons in the State regarding the unserved and underserved populations of persons with developmental disabilities which result from physical impairment, mental impairment, or a combination of physical and mental impairments; and

(C) obtain comments on any proposed recommendations concerning the removal of barriers to services for persons with developmental disabilities and to connect such services to existing State agencies by recommending the designation of one or more State agencies, as appropriate, to be responsible for the provision and coordination of such services.

(4) By January 1, 1990, each State Planning Council shall prepare and transmit to the Governor of the State and the legislature of the State a final written report concerning the review and analyses conducted under paragraphs (1) and (2). The report shall contain recommendations by the State Planning Council concerning—

(A) the most appropriate agency or agencies of the State to be designated as responsible for the provision and coordination of services for persons with developmental disabilities who are traditionally underserved, such as persons with developmental disabilities attributable to physical impairment, persons with developmental disabilities attributable to dual mental impairments, and persons with developmental disabilities attributable to a combination of physical and mental impairments, and such other subpopulations of persons with developmental disabilities (including minorities) as the State Planning Council may identify; and

(B) the steps to be taken to include the data and recommendations obtained through the conduct of the reviews and analyses under paragraphs (1) and (2) in the State Planning Council's ongoing advocacy, public policy, and model service demonstration activities.

(5) By January 15, 1990, the Governor of each State shall submit to the Secretary a copy of the report required by paragraph (4). By April 1, 1990, the Secretary shall transmit a summary of such reports to the appropriate committees of the Congress.

Pub. L. 88-164, Title I, Sec. 122; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2670; as amended Pub. L. 99-91, Sec. 6(b), Aug. 15, 1985, 99 Stat. 391; Pub. L. 100-146, Title II, Sec. 202, Oct. 29, 1987, 101 Stat. 845.

Sec. 6023. **Habilitation plans**

CONDITION FOR RECEIPT OF STATE ALLOTMENT

(a) The Secretary shall require as a condition to a State's receiving an allotment under this subchapter that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this subchapter (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b) of this section, and (2) provides for an annual review, in accordance with subsection (c) of this section, of each such plan.

REQUIREMENTS

(b) A habilitation plan for a person with developmental disabilities shall meet the following requirements:

(1) The plan shall be in writing.

(2) The plan shall be developed jointly by (A) the person for whom the plan is established, (B) where appropriate, such person's parent or guardian or other representative, and (C) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established.

(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such goals should include the increase or support of independence, productivity, and integration into the community for the person. Such objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall

(A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a case manager who will be responsible for coordinating the implementation of the plan.

(4) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

ANNUAL REVIEW

(c) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

Pub. L. 88-164, Title I, Sec. 123; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2674; amended Pub. L. 100-146, Title II, Sec. 203, Oct. 29, 1987, 101 Stat. 849.

Sec. 6024. State Planning Councils

ESTABLISHMENT

(a) Each State which receives assistance under this subchapter shall establish a State Planning Council which will serve as an advocate for all persons with developmental disabilities.

APPOINTMENT; MEMBERSHIP

(b)(1) The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State.

(2) The Governor of each State shall make appropriate provisions for the rotation of membership on the State Planning Council.

(3) Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973 [29 U.S.C.A. Sec. 701 et seq.], the State agency that administers funds provided under the Education of the Handicapped Act [20 U.S.C.A. Sec. 1401 et seq.], the State agency that administers funds provided under the Older Americans Act of 1965 [42 U.S.C.A. Sec. 3000 et seq.], and the State agency that administers funds provided under title XIX of the Social Security Act [42 U.S.C.A. Sec. 1396 et seq.] for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the State, the State protection and advocacy system established under section 6042 of this title, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in that State.

(4) At least one-half of the membership of each State Planning Council shall consist of persons who—

(A) are persons with developmental disabilities;

(B) are parents or guardians of such persons; or

(C) are immediate relatives or guardians of persons with mentally impairing developmental disabilities, and who are not employees of a State agency which receives funds or provides services under this subchapter, who are not managing employees (as defined in section 1126(b) of the Social Security Act [42 U.S.C.A. Sec. 1320a-5(b)]) of any other entity which receives funds or provides services under this subchapter and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act [42 U.S.C.A. Sec. 1320a-3(a)(3)]) with respect to such an entity.

(5) Of the members of the State Planning Council described in paragraph (4)—

(A) at least one-third shall be persons with developmental disabilities; and

(B)(i) at least one-third shall be individuals described in subparagraph (C) of paragraph (4), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

STAFF; PROFESSIONAL, TECHNICAL, AND CLERICAL PERSONNEL; SERVICES LIMITED TO COUNCIL ACTIVITIES

(c)(1) Each State Planning Council may prepare and approve a budget using amounts paid to the State under this subchapter to hire such staff and obtain the services of such professional, technical, and clerical personnel consistent with State law as the State Planning Council determines to be necessary to carry out its functions under this subchapter.

(2) The staff and other personnel of a State Planning Council, while working for the State Planning Council, shall be responsible solely for assisting the State Planning Council in carrying out its duties under this subchapter and shall not be assigned duties by the designated State agency or any other agency or office of the State.

DUTIES

(d) Each State Planning Council shall—

(1) develop jointly with the State agency designated under section 6022(b)(1)(B) of this title the State plan required by this subchapter, including the specifications of Federal and State priority area activities under section 6022(b)(5)(D)(i) of this title;

(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

Pub. L. 88-164, Title I, Sec. 124; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2675; amended Pub. L. 100-146, Title II, Sec. 204, Oct. 29, 1987, 101 Stat. 849.

Sec. 6025. State allotments

DETERMINATION OF AMOUNT

(a)(1) For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 6030 of this title among the States on the basis of—

(A) the population,

(B) the extent of need for services for persons with developmental disabilities, and

(C) the financial need, of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 6022 of this title for the provision under such plans of services for persons with developmental disabilities.

(2) Adjustments in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) may be made not more often than annually. The Secretary shall notify States of any adjustment made not less than six months before the beginning of the fiscal year in which such adjustment is to take effect.

(A) Except as provided in paragraph (4), for any fiscal year the allotment under paragraph (1)—

(i) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $160,000, and

(ii) to any other State may not be less than the greater of $300,000, or the amount of the allotment (determined without regard to subsection (d) of this section) received by the State for the fiscal year ending September 30, 1984.

(B) Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 6030 of this title for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 6030 of this title for such fiscal year bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.

(4) In any case in which amounts appropriated under section 6030 of this title for a fiscal year exceed $60,000,000, the allotment under paragraph (1) for such fiscal year—

(A) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $200,000; and

(B) to each of the several States, Puerto Rico, or the district of Columbia, may not be less than $350,000.

(5) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 6022(b)(2)(C) of this title, in the State plan of the State.

(6) In any case in which the total amount appropriated under section 6030 of this title for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29, the Secretary may increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 6030 of this title for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 6030 of this title for the immediately preceding fiscal year, bears to the total amount appropriated under section 6030 of this title for such preceding fiscal year.

CONTINUED AVAILABILITY OF UNOBLIGATED FUNDS

(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

COMBINED ALLOTMENTS TO STATES INVOLVED IN JOINT EFFORT

(c) Whenever the State plan approved in accordance with section 6022 of this title provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

REALLOTMENT OF FUNDS NOT REQUIRED BY STATE

(d) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallotment in the Federal Register), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) of this section for such fiscal year.

Pub. L. 88-164, Title I, Sec. 125; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2676; amended Pub. L. 100-146, Title II, Sec. 205, Oct. 29, 1987, 101 Stat. 850.

Sec. 6027. Withholding of payments for planning, administration and services

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 6022(b)(1) of this title finds that—

(1) there is a failure to comply substantially with any of the provisions required by section 6022 of this title to be included in the State plan, particularly section 6022(b)(3) or 6022(b) of this title; or

(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this subchapter,

the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under section 6025 of this title (or, in the discretion of the Secretary, that further payments will not be made to the State under section 6025 of this title for activities in which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payment to the State under section 6025 of this title, or shall limit further payment under section 6025 of this title to such State to activities in which there is no such failure.

Pub. L. 88-164, Title I, Sec. 127; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2678; amended Pub. L. 100-146, Title II, Sec. 207, Oct. 29, 1987, 101 Stat. 851.

Sec. 6029. Appeals by States

If any State is dissatisfied with the Secretary's action under section 6022(c) of this title or section 6027 of this title, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of the fact and may modify the previous action of the Secretary, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

Pub. L. 88-164, Title I, Sec. 129; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2678.

Sec. 6030. Authorization of appropriations

For allotments under section 6025 of this title, there are authorized to be appropriated $62,200,000 for fiscal year 1988, $69,900,000 for fiscal year 1989, and $77,400,000 for fiscal year 1990.

Pub. L. 88-164, Title I, Sec. 130; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 100-146, Title II, Sec. 208, Oct. 29, 1987, 101 Stat. 851.

Subchapter III—Protections And Advocacy Of Individual Rights

Sec. 6041. Congressional statement of purpose

It is the purpose of this subchapter to provide for allotments to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 6042 of this title.

Pub. L. 88-164, Title I, Sec. 141; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2679.

Sec. 6042. System requirement

SUBCHAPTER II

(a) In order for a State to receive an allotment under subchapter II of this chapter—

(1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities;

(2) such system must—

(A) have the authority to—

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) on an annual basis, provide the public with an opportunity to comment on priorities established by, and activities of, the system;

(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;

(E) not be administered by the State Planning Council;

(F) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

(G) have access to all records of—

(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

(ii) any person with developmental disabilities—

(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(III) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse or neglect;

(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1396a(a)(31)(B) of this title with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

ALLOTMENTS TO STATES; PERCENTAGE LIMITATION

(b)(1) To assist States in meeting the requirements of subsection (a) of this section, the Secretary shall allot to the States the amounts appropriated under section 6043 of this title. Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsection (a)(1) of this section and subsection (d) of section 6025 of this title, except that in any case in which—

(A) the total amount appropriated under section 6043 of this title for a fiscal year is at least $20,000,000—

(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $107,000; and

(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than $20,000; or

(B) the total amount appropriated under section 6043 of this title for a fiscal year is less than $20,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than $150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000.

(2) In any case in which the total amount appropriated under section 6043 of this title for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29, the Secretary may increase each of the minimum allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 6043 of this title for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 6043 of this title for the immediately preceding fiscal year, bears to the total amount appropriated under section 6043 of this title for such preceding fiscal year.

(3) A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a) of this section.

(4) Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 6043 of this title, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 6043 of this title bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

AVAILABILITY OF UNOBLIGATED AMOUNTS

(c) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

Pub. L. 88-164, Title I, Sec. 142; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 100-146, Title III, Sec. 2, 301, Oct. 29, 1987, 101 Stat. 851.

Sec. 6043. Authorization of appropriations

For allotments under section 6042 of this title, there are authorized to be appropriated $20,000,000 for fiscal year 1988, $22,000,000 for fiscal year 1989, and $24,200,000 for fiscal year 1990.

Pub. L. 88-164, Title I, Sec. 143; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2680; amended Pub. L. 100-146, Title III, Sec. 302, Oct. 29, 1987, 101 Stat. 853.

Subchapter IV—University Affiliated Programs

Sec. 6061. Congressional statement of purpose

The purpose of this subchapter is to provide for grants to university affiliated programs to assist in the provision of interdisciplinary training, the demonstration of exemplary services and technical assistance, and the dissemination of information which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

Pub. L. 88-164, Title I, Sec. 151; as added Pub. L. 91-517, Title I, Sec. 101(b), Oct. 30, 1970, 84 Stat. 1317 and amended Pub. L. 93-45, Title III, Sec. 301(b), June 18, 1973, 87 Stat. 95; Pub. L. 94-103, Title I, Secs. 101(a), 110(a), Oct. 4, 1975, 89 Stat. 486, 489; Pub. L. 95-602, Title V, Sec. 510(a), Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97-35, Title IX, Sec. 911(c), Aug. 13, 1981, 95 Stat. 563; as amended Pub. L. 98-221, Title III, Sec. 304, Feb. 22, 1984, 98 Stat. 35; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2681; Pub. L. 100-146, Title IV, Sec. 401(a), Oct. 29, 1987, 101 Stat. 853.

Sec. 6062. Grant authority

AUTHORIZATION

(a) From appropriations under section 6064(a) of this title, the Secretary shall make grants to university affiliated programs to assist in the administration and operation of the activities described in section 6001(18) of this title.

PURPOSES OF GRANTS; PROJECTS AND PROGRAMS

(b)(1)(A) From amounts appropriated under section 6064(b) of this title, the Secretary shall make grants of sufficient size and scope to university affiliated programs receiving grants under subsection (a) of this section to support training projects to train personnel to address the needs of persons with developmental disabilities in areas of emerging national significance, particularly projects to train personnel in the areas of early intervention programs (as described in paragraph (2)), programs for elderly persons with developmental disabilities (as described in paragraph (3)), and community-based service programs (as described in paragraph (4)).

(B) The Secretary shall make determinations with respect to grants under this subsection based on information relating to present and projected needs for the training of personnel based on identified State, regional, or national shortages of personnel, the capacity of the university affiliated programs to train personnel, and such other information as may be determined necessary and appropriate by the Secretary.

(C) Grants under this subsection may be used by university affiliated programs to (i) assist in paying the costs of courses of training or study for personnel to provide services for persons with developmental disabilities and (ii) establish fellowships or traineeships providing such stipends and allowances as may be determined by the Secretary.

(2) Grants under this subsection for training projects with respect to early intervention programs shall be for the purpose of assisting university affiliated programs in providing training to allied health personnel and other personnel who provide, or who will provide, interdisciplinary intervention to infants, toddlers, and preschool age children with developmental disabilities. Such training projects shall include instruction on methods of working and collaborating with professionals and families of persons with developmental disabilities.

(3) Grants under this subsection for training projects with respect to programs for elderly persons with developmental disabilities shall be for the purpose of supporting the planning, design, and implementation of coordinated interdisciplinary training programs between existing aging or gerontological programs and university affiliated programs in order to prepare professional staff to provide services for elderly persons with developmental disabilities.

(4) Grants under this subsection for training projects with respect to community-based programs shall be for the purpose of providing interdisciplinary training to personnel

who will provide direct supports and services for persons with developmental disabilities, including paraprofessionals who are employed or are preparing to be employed in community-based day programs or residential programs for persons with developmental disabilities. The Secretary shall ensure that all grants under this paragraph are made only to university affiliated programs that involve local community-level direct care programs and paraprofessional training programs in the preparation of the application for such grant and shall assure that any training under the university affiliated program will be coordinated with local programs.

ADDITIONAL GRANTS; ACTIVITIES

(c) From amounts appropriated under section 6064(b) of this title, the Secretary may make grants to university affiliated programs receiving grants under subsection (a) of this section to support one or more of the following activities:

(1) The provision of service-related training to persons with developmental disabilities, family members of such persons, professionals, volunteers, or other personnel to enable such persons, family members, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and integration into the community of persons with developmental disabilities.

(2) The conduct of an applied research program designed to produce more efficient and effective methods for (A) the delivery of services to persons with developmental disabilities, and (B) the training of professionals, paraprofessionals, and parents who provide such services.

PAYMENTS FOR COSTS OF ESTABLISHING AND MAINTAINING SATELLITE CENTERS; STUDY

(d) From amounts appropriated under section 6064(a) of this title, the Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. A satellite center which receives a grant under this section may engage in the activities described in subparagraph (A), (B), or (C) of section 6001(18) of this title and may compete for grants under subsections (b) and (c) of this section.

FEASIBILITY STUDIES; ESTABLISHMENT OF UNIVERSITY AFFILIATED PROGRAMS OR SATELLITE CENTERS

(e) From amounts appropriated under section 6064(a) of this title, the Secretary may make a grant to a university or a public or nonprofit entity which is associated with, or is an integral part of, a college or university, to study the feasibility of establishing a university affiliated program or a satellite center. Such study shall include an assessment of the needs of the area in which the university is located for such a program or center. The amount of a grant under this subsection may not exceed $35,000 for any fiscal year. A grant under this subsection may only be made in a State in which there is no university affiliated program or satellite center.

Pub. L. 88-164, Title I, Sec. 152; Pub. L. 91-517, Title I, Sec. 101(b), Oct. 30, 1970, 84 Stat. 1317; Pub. L. 94-103, Title I, Sec. 110(b)-(e)(1), Title III, Sec. 302(b)(1), Oct. 4, 1975, 89 Stat. 489, 490, 506; Pub. L. 94-278, Title XI, Sec. 1107(a) Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, Title V, Sec. 510(b), Nov. 6, 1978, 92 Stat. 3010; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2681; amended Pub. L. 100-146, Title IV, Sec. 402, Oct. 29, 1987, 101 Stat. 853.

Sec. 6063. Applications

STANDARDS FOR UNIVERSITY AFFILIATED PROGRAMS

(a) Not later than six months after October 19, 1984, the Secretary shall establish by regulation standards for university affiliated programs. Such standards shall reflect the special needs of all persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 6001(18) of this title.

SECRETARY; SUBMISSION TO; APPROVAL BY; CONTENTS

(b) No grants may be made under section 6062(a) of this title unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

(1) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds;

(2)(A) the applicant's program is in full compliance with the standards established under subsection (a) of this section, or

(B)(i) the applicant will make substantial progress toward bringing the program into compliance with such standards, and (ii) the program will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a) of this section, whichever is later, fully comply with such standards;

(3) the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this subchapter will be protected consistent with section 6009 of this title (relating to rights of the developmentally disabled);

(4) the activities conducted under this subchapter are consistent with, and to the extent feasible, complement and

further, the objectives contained in the State plan required under section 6022 of this title; and

(5) before the submission of such application, an opportunity for comment has been provided to the general public and the State Planning Council of the State in which the program will be conducted or the satellite center is or will be located.

REVIEW PROCESS

(c) The Secretary shall establish such a process for the review of applications for grants under section 6062(a) of this title as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's program reviews the application.

GRANT AMOUNT DETERMINED BY AMOUNT OF APPROPRIATION

(d)(1) If the total amount appropriated under section 6064(a) of this title for a fiscal year is at least $8,500,000, the amount of any grant under section 6062(a) of this title to a university affiliated program shall not be less than $200,000 for such fiscal year and the amount of any grant under section 6062(c) of this title to a satellite center shall not be less than $150,000 for such fiscal year.

(2) If the total amount appropriated under section 6064(a) of this title is less than $8,500,000, the amount of any grant under section 6062(a) of this title to a university affiliated program shall not be less than $150,000 for such fiscal year and the amount of any grant under section 6062(c) of this title to a satellite center shall not be less than $75,000 for such fiscal year.

(3)(A) For purposes of making grants under section 6062(a) of this title, the Secretary shall consider applications for grants for four university affiliated programs or satellite centers for each of the fiscal years 1988, 1989, and 1990 which are in addition to the total number of university affiliated programs and satellite centers receiving grants under such section for the preceding fiscal year.

(B) Such programs and centers shall, to the extent feasible, be geographically distributed for the purpose of serving States that are unserved by university affiliated programs and satellite centers under this subchapter on October 29, 1987.

(C) The Secretary may not deny an application for a university affiliated program or satellite center solely because of the size of the population proposed to be served by the program or center, if such application proposes to serve the population of an entire State.

PEER REVIEW

(e)(1) The Secretary shall be regulation require appropriate technical and qualitative peer review of applications for assistance under this subchapter by peer review groups established under paragraph (4).

(2) Regulations promulgated under paragraph (1) shall provide that the review of the application required by such paragraph shall be conducted by groups established under paragraph (4) that are composed of non-Federal individuals who, by experience or training, are highly qualified to assess the comparative quality of applications for assistance.

(3)(A) The Secretary may approve an application under this subchapter only if such application has been recommended by a peer review group that has conducted the peer review required under paragraph (1).

(B) This paragraph shall apply to the approval of grant applications received for fiscal year 1990 and succeeding fiscal years.

(4) The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding—

(A) the provisions of title 5, concerning appointments to the competitive service;

(B) the provisions of chapter 51, and subchapter III of chapter 53 of title 5, concerning classification and General Schedule pay rates; establish such peer review groups as are necessary to carry out this subsection, and appoint and set the rates of pay for members of such groups.

(5) The Secretary may waive the provisions of paragraph (3) concerning approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.

Pub. L. 88-164, Title I, Sec. 153, formerly Sec. 134; as added Pub. L. 91-517, Title I, Sec. 101(b), Oct. 30, 1970, 84 Stat. 1319; and renumbered and amended Pub. L. 94-103, Title I, Secs. 110(e)(2), 111, Title III, Secs. 302(a), (b)(2), Oct. 4, 1975, 89 Stat. 490, 506; Pub. L. 95-602, Title V, Sec. 511, Nov. 6, 1978, 92 Stat. 3011; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2682; amended Pub. L. 100-146, Title IV, Sec. 403, Oct. 29, 1987, 101 Stat. 855.

Sec. 6064. Authorization of appropriations

(a) For the purpose of grants under subsections (a), (d), and (e) of section 6062 of this Title, there are authorized to be appropriated $9,400,000 for fiscal year 1988, $10,200,000 for fiscal year 1989, and $11,000,000 for fiscal year 1990. Amounts appropriated under this section for a fiscal year shall remain available for obligation and expenditure until the end of the succeeding fiscal year.

(b) For the purpose of grants under sections 6062(b) and 6062(c) of this title, there are authorized to be appropriated $4,500,000 for fiscal year 1988, $5,000,000 for fiscal year 1989, and $5,500,000 for fiscal year 1990.

(c) The Secretary may use funds appropriated under subsection (a) of this section for the purposes described in subsection (b) of this section.

(d) Of the amounts appropriated under subsection (b) of this section at least 75 percent shall be used for grants under section 6062(b) of this title and the remainder shall be used for grants under section 6062(c) of this title.

Pub. L. 88-164, Title I, Sec. 134, formerly Sec. 154; as added Pub. L. 91-517, Title I, Sec. 101(b), Oct. 30, 1970, 84 Stat. 1323; amended Pub. L. 93-45, Title III, Sec. 301(c), June 18, 1973, 87 Stat. 95; and renumbered and amended Pub. L. 94-103, Title I, Secs. 101(b), 113, Title III, Secs. 302(a), Oct. 4, 1975, 89 Stat. 486, 492, 506; Pub. L. 94-278, Title XI, Sec. 1107(b), (c), Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, Title V, Sec. 514(b), Nov. 6, 1978, 92 Stat. 3017; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, Title IV, Sec. 404, Oct. 29, 1987, 101 Stat. 857.

Subchapter V—Projects Of National Significance

Sec. 6081. Congressional statement of purpose

The purpose of this subchapter is to provide for grants and contracts for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

Pub. L. 88-164, Title I, Sec. 161; as added Pub. L. 94-103, Title I, Sec. 105, Oct. 4, 1975, 89 Stat. 495; Pub. L. 95-602, Title V, Secs. 504(b)(2), (3), 513, Nov. 6, 1978, 92 Stat. 3006, 3016; Pub. L. 96-32, Sec. 3(a), July 10, 1979, 93 Stat. 82; Pub. L. 97-35, Title IX, Sec. 913, Aug. 13, 1981, 95 Stat. 563; as amended Pub. L. 98-221, Title III, Sec. 305, Feb. 22, 1984, 98 Stat. 35; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, Title V, Sec. 501(a), Oct. 29, 1987, 101 Stat. 857.

Sec. 6082. Grant or contract authority

PROJECTS OF NATIONAL SIGNIFICANCE; TECHNICAL ASSISTANCE AND DEMONSTRATION PROJECTS

(a) The Secretary may make grants to and enter into contracts with public or nonprofit private entities for—

(1) projects of national significance relating to persons with developmental disabilities, including projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, and pursue Federal interagency initiatives, and other projects of sufficient size and scope and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups); and

(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving the advocacy functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under subchapter IV of this chapter, and protection and advocacy services relating to the State protection and advocacy system described in section 6042 of this title.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.

APPLICATION REQUIREMENT; APPROVAL BY SECRETARY; STATE PLANNING COUNCIL; REVIEW

(b) No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 6022 of this title, and unless the application provides assurances that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under projects assisted under this subchapter will be protected consistent with section 6009 of this title (relating to the rights of the developmentally disabled). The Secretary shall provide to the State Planning Council in such State an opportunity to review the application for such project and to submit its comments on the application.

PROPOSED AND FINAL PRIORITIES FOR GRANTS AND CONTRACTS; PUBLICATION IN FEDERAL REGISTER

(c) Not later than January 1 of each year, the Secretary shall publish in the Federal Register proposed priorities for grants and contracts under this subchapter and shall allow a period of 60 days for public comments and suggestions concerning such proposed priorities. After analyzing and considering such comments, the Secretary shall publish final priorities for such grants and contracts in the Federal Register.

PAYMENTS; ADVANCE; REIMBURSEMENT; INTERVALS; CONDITIONS

(d) Payments under grants under subsection (a) of this section may be made in advance or by way of reimbursement and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) of this section shall be determined by the Secretary.

Pub. L. 88-164, Title I, Sec. 162; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, Title V, Sec. 502, Oct. 29, 1987, 101 Stat. 857.

Sec. 6083. Authorization of appropriations

(a) To carry out this subchapter, there are authorized to be appropriated $3,650,000 for fiscal year 1988, $3,650,000 for fiscal year 1989, and $3,650,000 for fiscal year 1990.

(b) Of the amounts appropriated under subsection (a) of this section for any fiscal year, $600,000 shall be available for grants and contracts under section 6082(a)(1) of this title for not more than three projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. The Secretary shall award grants and contracts under section 6082(a)(1) of this title for such projects within 6 months after October 29, 1987.

Pub. L. 88-164, Title I, Sec. 163; as added Pub. L. 98-527, Sec. 2, Oct. 19, 1984, 98 Stat. 2684; amended Pub. L. 100-146, Title V, Sec. 503, Oct. 29, 1987, 101 Stat. 858.

HEAD START ACT
42 U.S.C. Secs. 9831-9852

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

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HEAD START ACT

42 U.S.C. Secs. 9831-9852

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

Subchapter II—Head Start Programs

Sec. 9831. Statement of purpose and policy

(a) In recognition of the role which Project Head Start has played in the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families, it is the purpose of this subchapter to extend the authority for the appropriation of funds for such program.

(b) In carrying out the provisions of this subchapter, the Secretary of Health and Human Services shall continue the administrative arrangement responsible for meeting the needs of migrant and Indian children and shall assure that appropriate funding is provided to meet such needs.

Pub. L. 97-35, Title VI, Sec. 636, Aug. 13, 1981, 95 Stat. 499.

Sec. 9832. Definitions

For purposes of this subchapter:

(1) The term "Secretary" means the Secretary of Health and Human Services.

(2) The term "State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(3) The term "financial assistance" includes assistance provided by grant, agreement, or contract, and payments may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

Pub. L. 97-35, Title VI, Sec. 637, Aug. 13, 1981, 95 Stat. 499; amended by Pub. L. 98-558, Title I, Sec. 101, Oct. 30, 1984, 98 Stat. 2878.

Sec. 9833. Financial assistance for Head Start Programs

The Secretary may, upon application by an agency which is eligible for designation as a Head Start agency pursuant to section 9836 of this title, provide financial assistance to such agency for the planning, conduct, administration, and evaluation of a Head Start program focused primarily upon children from low-income families who have not reached the age of compulsory school attendance which (1) will provide such comprehensive health, nutritional, educational, social, and other services as will aid the children to attain their full potential; and (2) will provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level.

Pub. L. 97-35, Title VI, Sec. 638, Aug. 13, 1981, 95 Stat. 499.

Sec. 9834. Authorization of appropriations

There are authorized to be appropriated for carrying out the provisions of this subchapter $1,198,000,000 for fiscal year 1987, $1,263,000,000 for fiscal year 1988, $1,332,000,000 for fiscal year 1989, and $1,405,000,000 for fiscal year 1990.

Pub. L. 97-35, Title VI, Sec. 639, Aug. 13, 1981, 95 Stat. 499; amended by Pub. L. 98-558, Title I, Sec. 102, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, Title I, Sec. 101, Sept. 30, 1986, 100 Stat. 966.

Sec. 9835. Allotment of funds

DISTRIBUTION OF APPROPRIATIONS; PRIORITIES, ETC.

(a)(1) Of the sums appropriated pursuant to section 9834 of this title for any fiscal year beginning after September 30, 1981, the Secretary shall allot such sums in accordance with paragraphs (2) and (3).

(2) The Secretary shall reserve 13 percent of the amount appropriated for each fiscal year for use in accordance with the following order of priorities—

(A) Indian and migrant Head Start programs and services for handicapped children, except that there shall be made available for use by Indian and migrant Head Start programs, on a nationwide basis, no less funds for fiscal year 1987 and each subsequent fiscal year than were obligated for use by Indian and migrant Head Start programs for fiscal year 1985;

(B) payments to Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands according to their respective needs, except that such amount shall not exceed one-half of 1 percent of the sums appropriated for any fiscal year;

(C) training and technical assistance activities which are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities as described in section 9843 of this title, in an amount for each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982; and

(D) discretionary payments made by the Secretary.

The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter.

(3) The Secretary shall allot the remaining 87 percent of the amounts appropriated in each fiscal year among the States, in accordance with latest satisfactory data so that—

(A) each State receives an amount which is equal to the amount the State received for fiscal year 1981; and

(B)(i) 33 1/3 percent of any amount available after all allotments have been made under clause (A) for such fiscal year shall be distributed on the basis of the relative number of children from birth through 18 years of age, on whose behalf payments are made under the program of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C.A. Sec. 601 et seq.] in each State as compared to all States; and

(ii) 66 2/3 percent of such amount shall be distributed on the basis of the relative number of children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States.

(4) For purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

FEDERAL SHARE

(b) Financial assistance extended under this subchapter for a Head Start program shall not exceed 80 percent of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 percent of the approved costs of programs or activities assisted under this subchapter.

SERVICES COVERED

(c) No programs shall be approved for assistance under this subchapter unless the Secretary is satisfied that the services to be provided under such program will be in addition to, and not in substitution for, comparable services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such regulations as the Secretary may prescribe.

ENROLLMENT OF HANDICAPPED CHILDREN AND PROVISION OF SERVICES; REPORT TO CONGRESS

(d) The Secretary shall establish policies and procedures designed to assure that for fiscal year 1982 and thereafter no less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for handicapped children (as defined in paragraph (1) of section 1401 of Title 20) and that services shall be provided to meet their special needs. The Secretary shall report to the Congress at least annually on the status of handicapped children in Head Start programs, including the number of children being served, their handicapping conditions, and the services being provided such children.

DISTRIBUTION OF BENEFITS BETWEEN RESIDENTS OF RURAL AND URBAN AREAS

(e) The Secretary shall adopt appropriate administrative measures to assure that the benefits of this subchapter will be distributed equitably between residents of rural and urban areas.

Pub. L. 97-35, Title VI, Sec. 640, Aug. 13, 1981, 95 Stat. 499; amended by Pub. L. 98-558, Title I, Sec. 103, Oct. 30, 1984, 98 Stat. 2978; Pub. L. 99-425, Title I, Sec. 102, Sept. 30, 1986, 100 Stat. 966.

Sec. 9836. Designation of Head Start agencies

AUTHORIZATION; PREREQUISITES

(a) The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit agency, within a community, which (1) has the power and authority to carry out the purposes of this subchapter and perform the functions set forth in section 9837 of this title within a community; and (2) is determined by the Secretary to be capable of planning, conducting, administering, and evaluating, either directly or by other arrangements, a Head Start program.

DEFINITION

(b) For purposes of this subchapter, a community may be a city, county, or multicity or multicounty unit within a State, an Indian reservation, or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

PRIORITY

(c) In the administration of the provisions of this section, the Secretary shall give priority in the designation of Head Start agencies to any local public or private nonprofit agency which is receiving funds under any Head Start program on August 13, 1981 unless—

(1) the Secretary makes a finding that the agency involved fails to meet program and fiscal requirements established by the Secretary; and

(2) except that if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Secretary shall give priority in the designation of Head Start agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

The provisions of clause (2) shall apply only to agencies actually operating Head Start programs.

DESIGNATION; HEAD START AGENCY; QUALIFIED APPLICANTS

(d) If there is no Head Start agency as described in subsection (c)(2) of this section, and no existing Head Start program serving a community, then the Secretary may designate a Head Start agency from among qualified applicants in such community. Any such designation shall be governed by the program and fiscal requirements, criteria, and standards applicable on September 1, 1983, to then existing Head Start agencies.

APPLICABILITY

(e) The provisions of subsections (c) and (d) of this section shall be applied by the Secretary in the distribution of any additional appropriations made available under this subchapter during any fiscal year as well as to initial designations of Head Start agencies.

INVOLVEMENT OF PARENTS AND AREA RESIDENTS IN SELECTION OF AGENCIES

(f) The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Head Start agencies be continued.

Pub. L. 97-35, Title VI, Sec. 641, Aug. 13, 1981, 95 Stat. 501; amended by Pub. L. 98-558, Title I, Sec. 104, Oct. 30, 1984, 98 Stat. 2878.

Sec. 9837. Powers and functions of Head Start agencies

RECEIPT, ADMINISTRATION, AND TRANSFER OF FUNDS; SPONSORSHIP OF PROJECTS; DELEGATION OF AUTHORITY, ETC.

(a) In order to be designated as a Head Start agency under this subchapter, an agency must have authority under its charter or applicable law to receive and administer funds under this subchapter, funds and contributions from private or local public sources which may be used in support of a Head Start program, and funds under any Federal or State assistance program pursuant to which a public or private nonprofit agency (as the case may be) organized in accordance with this subchapter, could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a Head Start program. Such an agency must also be empowered to transfer funds so received, and to delegate powers to other agencies, subject to the powers of its governing board and its overall program responsibilities. The power to transfer funds and delegate powers must include the power to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives.

PARTICIPATION OF PARENTS IN DECISION-MAKING, IMPLEMENTATION, ETC.

(b) In order to be so designated, a Head Start agency must also (1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests; (2) provide for their regular participation in the implementation of such programs; (3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources; and (4) establish procedures to seek reimbursement, to the extent feasible, from other agencies for services for which any such other agency is responsible, which are provided to a Head Start participant by the Head Start agency.

COORDINATION WITH OTHER AGENCIES

(c) The head of each Head Start agency shall coordinate with other State and local programs serving the children in the Head Start agency to carry out the provisions of this subsection.[1]

Pub. L. 97-35, Title VI, Sec. 642, Aug. 13, 1981, 95 Stat. 502; amended by Pub. L. 99-425, Title I, Sec. 103, Sept. 30, 1986, 100 Stat. 966.

Sec. 9838. Submission of plans to Governors

In carrying out the provisions of this subchapter, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Head Start program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the Governor of the State, and such plan has not been disapproved by the Governor within 30 days of such submission, or, if so disapproved, has been reconsidered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this subchapter. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to the Governor. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 13, 1981.

Pub. L. 97-35, Title VI, Sec. 643, Aug. 13, 1981, 95 Stat. 502.

Sec. 9839. Administrative requirements and standards

EMPLOYMENT PRACTICES, NONPARTISANSHIP, STAFF ACCOUNTABILITY, PUBLIC ACCESS TO INFORMATION, ETC.

(a) Each Head Start agency shall observe standards of organization, management, and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this subchapter and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible. Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to (1) establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits; (2) assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness; (3) guard against personal or financial conflicts of interest; and (4) define employee duties in an appropriate manner which will in any case preclude employees from participating, in connection with the performance of their duties, in any form of picketing, protest, or other direct action which is in violation of law.

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[1] So in original. Probably should read "subchapter".

DEVELOPMENT AND ADMINISTRATIVE COSTS OF PROGRAMS

(b) No financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 percent of the total costs, including non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (1) the costs of developing and administering such program; and (2) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 percent of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one or more Head Start agencies of a common director and other administrative personnel. The Secretary may waive the limitation prescribed by this subsection for specific periods of time not to exceed 12 months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

RULES AND REGULATIONS; SPECIAL OR SIMPLIFIED REQUIREMENTS FOR SMALL AGENCIES; COMMON OR JOINT USE OF FACILITIES

(c) The Secretary shall prescribe rules or regulations to supplement subsection (a) of this section, which shall be binding on all agencies carrying on Head Start program activities with financial assistance under this subchapter. The Secretary may, where appropriate, establish special or simplified requirements for small agencies or agencies operating in rural areas. Policies and procedures shall be established to ensure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this subchapter and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

PUBLICATION AND NOTIFICATION OF PROPOSED RULES, ETC.

(d) At least 20 days prior to their effective date, all rules, regulations, guidelines, instructions, and application forms shall be published in the Federal Register and shall be sent to each grantee with the notification that each such grantee has the right to submit comments pertaining thereto to the Secretary prior to the final adoption thereof.

Pub. L. 97-35, Title VI, Sec. 644, Aug. 13, 1981, 95 Stat. 502.

Sec. 9840. Participation in Head Start programs; criteria for eligibility

(a)(1) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter. Except as provided in paragraph (2), such criteria may provide (A) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; and (B) pursuant to such regulations as the Secretary shall prescribe, that programs assisted under this subchapter may include, to a reasonable extent, participation of children in the area served who would benefit from such programs but whose families do not meet the low-income criteria prescribed pursuant to clause (A). During the period beginning on October 30, 1984, and ending on October 1, 1990, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and—

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to section 254c(b)(3) of this title and is located in a health manpower shortage area, as designated by the Secretary pursuant to section 254e(a)(1) of this title;

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);
the Head Start program in each such locality shall establish the criteria for eligibility except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program.

(b) The Secretary shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in Head Start programs, unless such fees are authorized by legislation hereafter enacted. Nothing in this subsection shall be construed to prevent the families of children who participate in Head Start programs and who are willing and able to pay the full costs of such participation from doing so.

(c) Each Head Start program operated in a community may provide more than one year of Head Start services to children from age 3 to the age of compulsory school attendance in the State in which the Head Start program is located.

Pub. L. 97-35, Title VI, Sec. 645, Aug. 13, 1981, 95 Stat. 504; amended by Pub. L. 98-558, Title I, Sec. 105, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 99-425, Title I, Sec. 104, Sept. 30, 1986, 100 Stat. 966.

Sec. 9841. Appeals, notice, and hearing

The Secretary shall prescribe procedures to assure that—

(1) special notice of and an opportunity for a timely and expeditious appeal to the Secretary will be provided for an agency or organization which desires to serve as a delegate agency under this subchapter and whose application to the Head Start agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Secretary, in accordance with regulations which the Secretary shall prescribe;

(2) financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(3) financial assistance under this subchapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than 30 days, unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

Pub. L. 97-35, Title VI, Sec. 646, Aug. 13, 1981, 95 Stat. 504.

Sec. 9842. Records and audits

(a) Each recipient of financial assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such financial assistance, the total cost of the project or undertaking in connection with which such financial assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this subchapter.

Pub. L. 97-35, Title VI, Sec. 647, Aug. 13, 1981, 95 Stat. 505.

Sec. 9843. Technical assistance and training

The Secretary shall provide, directly or through grants or other arrangements (1) technical assistance to communities in developing, conducting, and administering programs under this subchapter; and (2) training for specialized or other personnel needed in connection with Head Start programs, including a centralized child development training and national assessment program which may be administered at the State or local level leading to recognized credentials for such personnel, and resource access projects for personnel of handicapped children.

Pub. L. 97-35, Title VI, Sec. 648, Aug. 13, 1981, 95 Stat. 505; amended by Pub. L. 98-558, Title I, Sec. 106, Oct. 30, 1984, 98 Stat. 2879.

Sec. 9844. Research, demonstration, and pilot projects

(a) The Secretary may provide financial assistance through grants or contracts for research, demonstration, or pilot projects conducted by public or private agencies which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise in furthering the purposes of this subchapter.

(b) The Secretary shall establish an overall plan to govern the approval of research, demonstration, or pilot projects and the use of all research authority under this subchapter. Such plan shall set forth specific objectives to be achieved and priorities among such objectives.

(c) No funds appropriated under this subchapter may be combined with funds appropriate under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this title.

Pub. L. 97-35, Title VI, Sec. 649, Aug. 13, 1981, 95 Stat. 505; amended by Pub. L. 98-558, Title I, Sec. 107, Oct. 30, 1984, 98 Stat. 2880.

Sec. 9845. Announcement of research, demonstration, and pilot project grants or contracts

CONTENTS OF PUBLIC ANNOUNCEMENTS

(a) The Secretary shall make a public announcement concerning—

(1) the title, purpose, intended completion date, identity of the grantee or contractor, and proposed cost of any grant or contract with a private or non-Federal public agency or organi-

zation for any research, demonstration, or pilot project under this subchapter; and

(2) the results, findings, data, or recommendations made or reported as a result of such activities.

TIME

(b) The public announcements required by subsection (a)(1) of this section shall be made within 30 days of making such grants or contracts, and the public announcements required by subsection (a)(2) of this section shall be made within 90 days of the receipt of such results.

STUDIES, ETC., PROPERTY OF UNITED STATES

(c) The Secretary shall take necessary action to assure that all studies, proposals, and data produced or developed with Federal funds employed under this subchapter shall become the property of the United States.

PUBLICATION OF SUMMARIES OF RESULTS; SUBMISSION TO APPROPRIATE CONGRESSIONAL COMMITTEES

(d) The Secretary shall publish summaries of the results of activities carried out pursuant to this subchapter not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such summaries.

Pub. L. 97-35, Title VI, Sec. 650, Aug. 13, 1981, 95 Stat. 505.

Sec. 9846. Evaluation

IMPACT, EFFECTIVENESS, ETC.; PERSONS TO CONDUCT EVALUATIONS

(a) The Secretary shall provide, directly or through grants or contracts, for the continuing evaluation of programs under this subchapter, including evaluations that measure and evaluate the impact or programs authorized by this subchapter, in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not directly involved in the administration of the program or project operation.

HEAD START PERFORMANCE STANDARDS

(b) The Secretary shall operate the programs and projects covered by this subchapter in accordance with Head Start performance standards. Any revisions in such standards shall not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards in effect on November 2, 1978. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this subchapter.

PERSONS OR ENTITIES TO ASSIST IN OR CONDUCT EVALUATIONS

(c)(1) In carrying out evaluations under this subchapter, the Secretary shall establish working relationships with the faculties of colleges or universities located in the area in which any such evaluation is being conducted, unless there is no such college or university willing and able to participate in the evaluation. For purposes of the preceding sentence, for any single evaluation, areas in which such working relationships are established may not be larger than 3 contiguous States.

(2) In carrying out evaluations under this subchapter, the Secretary may require Head Start agencies to provide for independent evaluations.

VIEWS OF SECRETARY

(d) In carrying out evaluations under this subchapter, the Secretary shall, whenever feasible, arrange to obtain the specific views of persons participating in and served by programs and projects assisted under this subchapter about such programs and projects.

PUBLICATION OF RESULTS; SUBMISSION OF RESULTS TO APPROPRIATE CONGRESSIONAL COMMITTEES

(e) The Secretary shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

STUDIES, ETC., PROPERTY OF UNITED STATES

(f) The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with assistance under this subchapter shall become the property of the United States.

Pub. L. 97-35, Title VI, Sec. 651, Aug. 13, 1981, 95 Stat. 506; amended by Pub. L. 98-558, Title I, Sec. 108, Oct. 30, 1984, 98 Stat. 2880.

Sec. 9847. Poverty line

ESTABLISHMENT FOR USE AS CRITERIA FOR PARTICIPATION

(a) The Secretary shall revise annually (or at any shorter interval the Secretary deems feasible and desirable) a poverty line which, except as provided in section 9840 of this title, shall be used as a criterion of eligibility for participation in Head Start programs.

IMPLEMENTATION OF REVISION

(b) The revision required by subsection (a) of this section shall be accomplished by multiplying the official poverty line (as defined by the Office of Management and Budget) by the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the revision is made.

TIME FOR REVISION

(c) Revisions required by subsection (a) of this section shall be made and issued not more than 30 days after the date on which the necessary Consumer Price Index data become available.

Pub. L. 97-35, Title VI, Sec. 652, Aug. 13, 1981, 95 Stat. 506.

Sec. 9848. Comparability of wages

The Secretary shall take such action as may be necessary to assure that persons employed in carrying out programs financed under this subchapter shall not receive compensation at a rate which is (1) in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of the persons providing substantially comparable services, or in excess of the average rate of compensation paid to a substantial number of the persons providing substantially comparable services in the area of the person's immediately preceding employment, whichever is higher; or (2) less than the minimum wage rate prescribed in section 206(a)(1) of Title 29.

Pub. L. 97-35, Title VI, Sec. 653, Aug. 13, 1981, 95 Stat. 507.

Sec. 9849. Nondiscrimination provisions

DISCRIMINATION BASED ON RACE, CREED, COLOR, ETC., AS BASIS FOR DENIAL OF FINANCIAL ASSISTANCE

(a) The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

SEX DISCRIMINATION; ENFORCEMENT PROVISIONS APPLICABLE

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d-1 of this title. Section 2000d-2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

DISCRIMINATION BASED ON HANDICAPPING CONDITION AS BASIS FOR DENIAL OF FINANCIAL ASSISTANCE

(c) The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract relating to the financial assistance specifically provides that no person with responsibilities in the operation of the program, project, or activity will discriminate against any individual because of a handicapping condition in violation of section 794 of Title 29.

Pub. L. 97-35, Title VI, Sec. 654, Aug. 13, 1981, 95 Stat. 507.

Sec. 9850. Limitation with respect to certain unlawful activities

No individual employed or assigned by any Head Start agency or other agency assisted under this subchapter shall, pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this subchapter by such Head Start agency or such other agency, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

Pub. L. 97-35, Title VI, Sec. 655, Aug. 13, 1981, 95 Stat. 507.

Sec. 9851. Political activities

(a) For purposes of chapter 15 of Title 5, any agency which assumes responsibility for planning, developing, and coordinating Head Start programs and receives assistance under this subchapter shall be deemed to be a State or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any agency receiving assistance under this subchapter shall be deemed to be a State or local agency.

(b) Programs assisted under this subchapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity. The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

Pub. L. 97-35, Title VI, Sec. 656, Aug. 13, 1981, 95 Stat. 508.

Sec. 9852. Advance funding

For the purpose of affording adequate notice of funding available under this subchapter, appropriations for carrying out this subchapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

Pub. L. 97-35, Title VI, Sec. 657, Aug. 13, 1981, 95 Stat. 508.

COMPREHENSIVE CHILD DEVELOPMENT ACT

42 U.S.C. Secs. 9881-9887

[P.L. 100-297, April 28, 1988, 102 Stat. 325]

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

Subchapter V—Comprehensive Child Development Program

Sec.

9881. Child development projects
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COMPREHENSIVE CHILD DEVELOPMENT ACT

42 U.S.C. Secs. 9881-9887

[P.L. 100-297, April 28, 1988, 102 Stat. 325]

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

Subchapter V—Comprehensive Child Development Program

Sec. 9881. Child development projects

(a)(1) The Secretary is authorized to make operating grants to eligible agencies in rural and urban areas to pay the Federal share of the cost of projects designed to encourage intensive and comprehensive supportive services which will enhance the physical, social, emotional, and intellectual development of low-income children from birth to compulsory school age, including providing necessary support to their parents and other family members.

(2) The Secretary shall enter into contracts, agreements, or other arrangements with at least 10, but no more than 25, eligible agencies to carry out this section.

(3) In carrying out this section, the Secretary shall consider—

(A) the capacity of the eligible agency to administer the project for which assistance is sought;

(B) the proximity of the eligible agency and facilities associated with the project to the infants, young children, parents, and other family members, to be served by the project, or the ability of the agency to provide offsite services;

(C) the ability of the eligible agency to coordinate its activities with State and local public agencies (such as agencies responsible for education, health and mental health services, social services, child care, nutrition, income assistance, and other relevant services), with appropriate nonprofit private organizations involved in the delivery of intensive and comprehensive support services, and with the appropriate local educational agency;

(D) the management and accounting skills of the eligible agency;

(E) the ability of the eligible agency to use the appropriated Federal, State, and local programs in carrying out the project, and

(F) the eligible agency's involvement of project participants and community representatives in the planning and operation of the project.

(b)(1)(A) The Secretary may make planning grants to eligible agencies to pay the Federal share of the cost of planning for projects funded under this section.

(B)(i) No planning grant may be for a period longer than 1 year.

(ii) Not more than 30 planning grants may be made under this subsection.

(2) Each eligible agency desiring to receive a planning grant under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

(A) describe the capacity of the eligible agency to provide or ensure the availability of the intensive and comprehensive supportive services pursuant to the purposes of section 2402 of the Comprehensive Child Development Centers Act of 1988,

(B) describe the eligible infants, young children, parents, and other family members to be served by the project, including the number to be served and information on the population and geographic location to be served;

(C) describe how the needs of such infants and young children will be met by the project;

(D) describe the intensive and comprehensive supportive services that project planners intend to address in the development of the plan;

(E) describe the manner in which the project will be operated together with the involvement of other community groups and public agencies;

(F) specify the entities that the eligible agency intends to contact and coordinate activities with during the planning phase;

(G) identify a planning phase advisory board which includes prospective project participants, representatives of the community in which the project will be located, and individuals with expertise in the services to be offered;

(H) describe the capacity of the eligible agency to raise the non-Federal share of the costs of the project; and

(I) contain such other information as the Secretary may reasonably require.

(c)(1)(A) The Secretary shall make operating grants to eligible agencies selected in accordance with this section to pay the Federal share of the cost of carrying out projects for intensive and comprehensive supportive services for low-income infants, young children, parents, and other family members.

(B) The Secretary shall ensure that there will be projects receiving grants under this section in rural areas.

(C) In making operating grants in a fiscal year, the Secretary shall give priority to eligible entities that received operating grants under this section for the preceding fiscal year.

(2)(A) To be eligible to receive an operating grant under this section, an eligible agency shall—

(i) have a planning grant application approved under subsection (b) on file with the Secretary or have experience in conducting projects similar to the projects authorized by this section, and

(ii) submit an operating grant application at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(B) Each such application shall—

(i) identify the population and geographic location to be served by the project;

(ii) provide assurances that services are closely related to the identifiable needs of the target population;

(iii) provide assurances that each project will provide directly or arrange for intensive and comprehensive support services;

(iv) identify the referral providers, agencies, and organizations that the eligible entity will use to carry out the project for which such operating grant is requested;

(v) provide assurances that intensive and comprehensive supportive services will be furnished to parents beginning with prenatal care and will be furnished on a continuous basis to infants and young children, as well as to their parents and other family members;

(vi) describe how services will be furnished at offsite locations, if appropriate;

(vii) describe the extent to which the eligible agency through its project, will coordinate and expand existing services as well as provide services not available in the area to be served by the project;

(viii) describe how the project will relate to the local educational agency as well as State and local agencies providing health, nutritional, education, social, and income maintenance services;

(ix) provide assurances that the eligible agency will pay the non-Federal share of the cost of the project for which such operating grant is requested, from non-Federal sources;

(x) collect and provide data on groups of individuals and geographic areas served, including types of services to be furnished, estimated cost of providing comprehensive services on an average per user basis, types and nature of conditions and needs identified and met, and such other information as the Secretary may require;

(xi) provide for an advisory committee consisting of—

(I) participants in the project,

(II) individuals with expertise in furnishing services the project offers and in other aspects of child health and child development, and

(III) representatives of the community in which the project will be located;

(xii) describe plans for evaluating the impact of the project; and

(xiii) include such additional assurances, and agree to submit such necessary reports, as the Secretary may reasonably require.

(d)(1)(A) The Secretary shall pay to eligible agencies having applications approved under subsections (b) and (c) the Federal share of the cost of the activities described in such applications.

(B) The Federal share of such costs shall be 80 percent for each fiscal year.

(C) The non-Federal share of such costs may be provided in cash or in kind fairly evaluated, including equipment or services.

(D) Payments under this section may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) No planning grant to a single eligible agency may exceed $35,000.

(e)(1) The Secretary shall, based on the projects assisted under this section, conduct or provide for, an evaluation of the success of projects authorized by this section.

(2) Each eligible agency receiving a grant under this section shall furnish information requested in order to carry out the evaluation required by paragraph (1).

(f) Not later than October 1, 1993, the Secretary shall prepare and submit to the Congress a report on the evaluation required by subsection (e)(1), together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

Pub. L. 97-35, Title VI, Sec. 670N; as added Pub. L. 100-297, Title II, Sec. 2503, April 28, 1988, 102 Stat. 326.

Sec. 9882. Limitation

For purposes of making any grant under section 9881 of this Title, the Secretary may not take into consideration whether the applicant for such grant applies for or receives funds under subchapter II of this chapter.

Pub. L. 97-35, Title VI, Sec. 670O; as added Pub. L. 100-297, Title II, Sec. 2503, April 28, 1988, 102 Stat. 328.

Sec. 9883. Applicability of certain rules and regulations

Except when inconsistent with the provisions of this subchapter, the rules and regulations prescribed by the Secretary, as in effect from time to time, to carry out subchapter II of this chapter shall apply to carrying out this subchapter to the extent that services provided under this subchapter are similar to services provided under subchapter II of this chapter.

Pub. L. 97-35, Title VI, Sec. 670P; as added Pub. L. 100-297, Title II, Sec. 2503, April 28, 1988, 102 Stat. 329.

Sec. 9884. Continuing evaluation of projects

(a) The Secretary shall provide, directly or through grants and contracts, for the continuing evaluation of projects under this subchapter in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services. Such evaluation shall include—

(1) evaluations that measure the impact of such projects; and

(2) where appropriate, comparisons of individuals who participate in such projects with appropriate control groups composed of individuals who do not participate in such projects.

(b) Each evaluation conducted under subsection (a) of a project shall be conducted by persons who are not directly involved in the administration of such project.

(c) In carrying out subsection (a), the Secretary may require eligible agencies to provide for independent evaluations.

Pub. L. 97-35, Title VI, Sec. 670Q; as added Pub. L. 100-297, Title II, Sec. 2503, April 28, 1988, 102 Stat. 329.

Sec. 9885. General administration

The Secretary shall carry out this subchapter through the administrative entity of the Department of Health and Human Services used by the Secretary to carry out subchapter II of this chapter.

Pub. L. 97-35, Title VI, Sec. 670R; as added Pub. L. 100-297, Title II, Sec. 2503, April 28, 1988, 102 Stat. 329.

Sec. 9886. Definitions

As used in this subchapter—

(1) the term 'early intervention services' has the same meaning given that term by section 672(2) of the Education of the Handicapped Act (20 U.S.C. 1472(2));

(2) the term 'eligible agency' means a Head Start agency, an agency that is eligible to be designated as a Head Start agency under section 641, a community-based organization, an institution of higher education, a public hospital, a community development corporation, or a public or private nonprofit agency or organization specializing in delivering social services to infants or young children (42 U.S.C. 9836)

(3) the term 'institution of higher education' has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

(4) the term 'intensive and comprehensive supportive services' means—

(A) in the case of infants and young children, services designed to enhance the physical, social, emotional, and intellectual development of such infants and children and such term includes infant and child health services (including screening and referral), child care that meets State licensing requirements, early childhood development programs, early intervention services for children with or at risk of developmental delays, and nutritional services; and

(B) in the case of parents and other family members, services designed to better enable parents and other family members to contribute to their child's healthy development and such term includes prenatal care; education in infant and child development, health, nutrition, and parenting; referral to education, employment counseling and training as appropriate; and assistance in securing adequate income support, health care, nutritional assistance, and housing;

(5) the term 'local educational agency' has the same meaning given that term by section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12);

(6) the term 'low income' means persons who are from families having incomes below the poverty line as determined and revised in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)); and

(7) the term 'Secretary' means the Secretary of Health and Human Services.

Pub. L. 97-35, Title VI, Sec. 670S; as added Pub. L. 100-297, Title II, April 28, 1988, 102 Stat. 329.

Sec. 9887. Authorization of appropriations

(a) Subject to subsection (b), there is authorized to be appropriated $25,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993 to carry out this subchapter.

(b) Notwithstanding any other provision of law, no funds shall be available for fiscal year 1989 or 1990 to carry out this subchapter if the amount appropriated for such fiscal year to carry out subchapter II of this chapter is less than 104 percent of the amount appropriated for the preceding fiscal year to carry out subchapter II of this chapter.

(c) Funds made available in accordance with this section shall remain available for obligation and expenditure for one fiscal year succeeding the fiscal year for which such funds are appropriated.

Pub. L. 97-35, Title VI, Sec. 670T; as added Pub. L. 100-297, Title II, Sec. 2503, April 28, 1988, 102 Stat. 330.

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STATE-ADMINISTERED PROGRAMS

(34 Code of Federal Regulations Part 76)

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(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b) and 3474, unless otherwise noted)
[Source: 45 FR 22517, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980]

Editorial Note: Nomenclature changes to Part 76 appear at 45 FR 86296, Dec. 30, 1980

Subpart A—General

REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

Reg. 76.1 Programs to which Part 76 applies

(a) The regulations in Part 76 apply to each State-administered program of the Department.

(b) If a State formula grant program does not have implementing regulations the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State formula grant program" means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b) and 3474)
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84059, Dec. 22, 1980; 47 FR 52354, Nov. 19, 1982; 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.2 Exceptions in program regulations to Part 76.

If a program has regulations that are not consistent with Part 76, the implementing regulations for that program identify the sections of Part 76 that do not apply.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.3 ED general grant regulations apply to these programs.

The ED general grant regulations in 34 CFR Part 74 apply to the programs covered by this part. To find subjects covered under 34 CFR Part 74, look in the table of contents at the beginning of 34 CFR Part 74.

(Authority: 20 U.S.C. 1221e-3(a)(1))

ELIGIBILITY FOR A GRANT OR SUBGRANT

Reg. 76.50 Statutes determine eligibility and wheth er subgrants are made.

(a) Under a program covered by this part, the Secretary makes a grant;

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may:

(1) Use grant funds directly; and

(2) Make subgrants to eligible applicants.

(c) The regulations in Part 76 on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute:

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Subpart B—How A State Applies For A Grant

STATE PLANS AND APPLICATIONS

Reg. 76.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program covered by this part. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))
[52 FR 27804, July 24, 1987]

Reg. 76.101 The general State application.

A State that makes subgrants to local educational agencies under a program subject to this part shall have on file with the

Secretary a general application that meets the requirements of Section 435 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232d)
[52 FR 27804, July 24, 1987]

Reg. 76.102 Definition of "State plan" for Part 76.

As used in this part, "State plan" means any of the following documents:

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Migrant children.* The application under Sections 141-143 of the Elementary and Secondary Education Act.

(c) *Basic skills.* The agreement under Title II-B of the Elementary and Secondary Education Act.

(d) *Library resources.* The State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Innovative projects: Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(f) *Educational Improvement, Resources, and Support.* The State plan under Title IV of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The State plan under Title V-B of the Elementary and Secondary Education Act.

(h) *State educational agencies.* The application under Title V-A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(i) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(j) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(k) *Academic subjects.* The State plan under Title III-A of the National Defense Education Act.

(l) *Handicapped children.* The State plan under Part B of the Education of the Handicapped Act.

(m) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(n) *Vocational education.* The annual program plan and the annual accountability report under Part A of Title I of the Vocational Education Act.

(o) *Career education.* The State plan under Section 7 of the Career Education Incentive Act.

(p) *Adult education.* The State plan under the Adult Education Act.

(q) *Community services.* The State plan under Title I of the Higher Education Act.

(r) *State student incentive grants.* The application under Section 415C of the Higher Education Act.

(s) *Educational information centers.* The State plan under Section 418B of the Higher Education Act.

(t) *Incentive grants for State student financial assistance training.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for intrastate planning under Section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan a long-range program, and an annual program under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(x) *Client Assistance Program.* The written request for assistance under section 112 of the Rehabilitation Act of 1973, as amended.

(y) *Removal of Architectural Barriers to the Handicapped.* The application under Section 607 of the Education of the Handicapped Act.

(z) *Emergency Immigrant Education.* The application under the Emergency Immigrant Education Program.

(aa) *Math-science programs.* The State application under Section 209 of Title II of the Education for Economic Security Act.

(bb) *Programs that do not have regulations.* If a State-administered program does not have implementing regulations, the documents that the authorizing statute for the program requires a State to submit to receive a grant.

(cc) *Carl D. Perkins Scholarship Program.* The application under Section 563 of the Higher Education Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84060, Dec. 22, 1980; 50 FR 9962, Mar. 12, 1985; 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 33188, Aug. 16, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 52 FR 27804, July 24, 1987]

Reg. 76.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Secretary determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Secretary may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to:

(1) The annual accountability report under Part A of Title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act;

(3) The application under Sections 141-143 of the Elementary and Secondary Education Act; and

(4) The State application under Section 209 of Title II of the Education for Economic Security Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1231g(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985]

Reg. 76.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Secretary transmits to the State regarding a program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

CONSOLIDATED GRANT APPLICATIONS FOR INSULAR AREAS

(Authority: Title V, Pub. L. 95-134, 91 Stat. 1159 (48 U.S.C. 1469a).
[Source: Sections 76.125-76.137 appear at 47 FR 17421, Apr. 22, 1982, unless otherwise noted.]

Reg. 76.125 What is the purpose of these regulations?

(a) Sections 76.125 through 76.137 of this part contain requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs listed in paragraph (c) of this section.

(b) For the purpose of Regs. 76.125-76.137 of this part the term "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more of the following programs. [See TABLE 76-A on page 34.76-6]

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b) AND 3474]
[47 FR 17421, Apr. 22, 1982, as amended at 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.126 What regulations apply to the consolidated grant applications for insular areas?

The following regulations apply to those programs included in a consolidated grant:

(a) The regulations in Regs. 76.125 through 76.137; and

(b) The regulations that apply to each specific program included in a consolidated grant for which funds are used.

(Authority: 48 U.S.C. 1469a)

Reg. 76.127 What is the purpose of a consolidated grant?

An Insular Area may apply for a consolidated grant for two or more of the programs listed in Reg. 76.125(c). This procedure is intended to:

(a) Simplify the application and reporting procedures that would otherwise apply for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the purposes to be served by the programs that are consolidated.

(Authority: 48 U.S.C. 1469a)

Reg. 76.128 What is a consolidated grant?

A consolidated grant is a grant to an Insular Area for any two or more of the programs listed in Reg. 76.125(c). The amount of the consolidated grant is the sum of the allocations the Insular Area receives under each of the programs included in the consolidated grant if there had been no consolidation.

Example. Assume the Virgin Islands applies for a consolidated grant that includes programs under the Adult Education Act, Vocational Education Act, and Chapter 1 of the Education Consolidation and Improvement Act. If the Virgin Islands' allocation under the formula for each of those three programs is $150,000; the total consolidated grant to the Virgin Islands would be $450,000.

(Authority: 48 U.S.C. 1469a)

TABLE 76-A

CFDA No. and name of program	Authorizing legislation	Implementing regulations, Title 34 CFR (Part)
	Library Programs	
84.034 Public Library Services State Grant Program	Title I, Library Services and Construction Act (20 U.S.C. 351-354)	770
84.035 Interlibrary Cooperation	Title III, Library Services and Construction Act (20 U.S.C. 355e-355e-2)	770
	Postsecondary Education Programs	
84.001 Grants for Construction, Reconstruction, and of Undergraduate Academic Facilities	Title VII, Part E of the Higher Education Act (20 U.S.C. 1132b-1132b-2)	617
84.046 Education Outreach Programs	Title I, Part B of the Higher Education Act (20 U.S.C. 1011-1019)	610
84.135 Aid to Land-Grant Colleges	Second Morrill Act of 1890 (7 U.S.C. 322 and 323)	621
84.176 Carl D. Perkins Scholarship Program	Title V Part E of the Higher Education Act (20 U.S.C. 1119d-1119d-8)	653
	Vocational and Adult Education Programs	
84.002 Adult Education — State-administered Programs	Adult Education Act (except) Sections 309, 316 and 318) (20 U.S.C. 1201 et seq).	426
84.048 Vocational Education — Basic Grants to States	Title I, Part A of the Vocational Education Act (20 U.S.C. 2301-2380)	400
84.049 Vocational Education — Consumer and Homemaking Education	Title I, Part A, Section 150 of the Vocational Education Act (20 U.S.C. 2380)	400
84.050 Vocational Education — Program Improvement and Services	Title I, Part A, Sections 130-136 of the Vocational Education Act (20 U.S.C. 2350-2356)	400
84.052 Vocational Education — Special Programs for the Disadvantaged	Title I, Part A, Section 140 of the Vocational Education Act (20 U.S.C. 2370)	400
84.053 Vocational Education — State Advisory Council	Title I, Part A, Section 105 of the Vocational Education Act (20 U.S.C. 2305)	400
84.121 Vocational Education — State Planning and Evaluation	Title I, Part A, Sections 102 and 111 of the Vocational Education Act (20 U.S.C. 2302 and 2311)	400
	Education for the Handicapped Programs	
84.009 Program for Education of Handicapped Children in State Operated or Supported Schools	Section 554(a)(2)(B) of Chapter 1 of the Education Consolidation & Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2771-2772)	302
84.027 Handicapped Preschool and School Programs — State Grant Programs	Education of Handicapped Act Part B (except Section 619) (20 U.S.C. 1411-1418; 1420)	300
84.027 Handicapped Preschool and School Programs — Incentive Grants.	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419)	301
84.155 Removal of architectural barriers to the handicapped	Section 607, Education of the Handicapped Act (20 U.S.C. 1406)	304
	Other Elementary and Secondary Programs	
84.010 Educationally Deprived Children — Local Educational Agencies	Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801-3807)	200
84.011 Migrant Education Programs State Formula Grant Program	Section 554(a)(2)(A) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.SC. 2781)	204
84.012 Educationally Deprived Children — State Administration	Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801-3807)	200
84.013 Educationally Deprived Children in State Administered Institutions Serving Neglected and Delinquent Children	Section 554(a)(2)(C) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2781)	203
84.068 Indochinese Refugee Children Assistance Act	Subpart C of the Consolidated Refugee Assistance Act (8 U.S.C. 1522)	537
84.150 Chapter 2 — Consolidation of Federal Programs for Elementary and Secondary Education	Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 2811-3862)	298
84.162 Emergency Immigrant Education Program	Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108)	581
84.164 State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction	Title II of the Education for Economic Security Act (20 U.S.C. 3961-3971, 3973)	208

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Reg. 76.129 How does a consolidated grant work?

(a) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jurisdiction, one or more of the programs included in the grant.

Example. Assume that Guam applies for a consolidated grant under the Vocational Education Act, the Handicapped Preschool and School Programs-Incentive Grants, and the Adult Education Act and that the sum of the allocations under these programs is $700,000. Guam may choose to allocate this $700,000 among all of the programs authorized under the three programs. Alternatively, it may choose to allocate the entire $700,000 to one or two of the programs; for example, the Adult Education Act Program.

(b) An Insular Area shall comply with the statutory and regulatory requirements that apply to each program under which funds from the consolidated grant are expended.

Example. Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Adult Education Act. American Samoa need not submit to the Secretary a State plan that requires policies and procedures to assure all students equal access to adult education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(Authority: 48 U.S.C. 1469a)

Reg. 76.130 How are consolidated grants made?

(a) The Secretary annually makes a single consolidated grant to each Insular Area that meets the requirements of Reg. Reg. 76.125 through 76.137 and each program under which the grant funds are to be used and administered.

(b) The Secretary may decide that one or more programs cannot be included in the consolidated grant if the Secretary determines that the Insular Area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the programs.

(c) Under a consolidated grant, an Insular Area may use a single advisory council for any or all of the programs that require an advisory council.

(d) Although Pub. L. 95-134 authorizes the Secretary to consolidate grant funds that the Department awards to an Insular Area, it does not confer eligibility for any grant funds. The eligibility of a particular Insular Area to receive grant funds under a Federal education program is determined under the statute and regulations for that program.

(Authority: 48 U.S.C. 1469a)

Reg. 76.131 How does an insular area apply for a consolidated grant?

(a) An Insular Area that desires to apply for a grant consolidating two or more programs listed in Reg. 76.125(c) shall submit to the Secretary an application that:

(1) Contains the assurances in Reg. 76.132; and

(2) Meets the application requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of a separate State plan or other similar document required by this part or by the authorizing statutes and regulations for programs included in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that:

(1) Contains a list of the programs in Reg. 76.125(c) to be included in the consolidated grant;

(2) Describes the program or programs in Reg. 76.125(c) under which the consolidated grant funds will be used and administered;

(3) Describes the goals, objectives, activities, and the means of evaluating program outcomes for the programs for which the Insular Area will use the funds received under the consolidated grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carryover funds of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

(Authority: 48 U.S.C. 1469a)

Reg. 76.132 What assurances must be in a consolidated grant application?

(a) An Insular Area shall include in its consolidated grant application assurances to the Secretary that it will:

(1) Follow policies and use administrative practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the programs under which funds are to be used and administered, (except requirements for matching funds);

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Submit an annual report to the Secretary containing information covering the program(s) for which the grant is used and administered, including financial and program performance information required under 34 CFR Part 74, Subparts I and J;

(6) Provide that funds received under the consolidated grant will be under control of, and that title to property acquired with these funds will be in, a public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records, including a copy of the State Plan or application document under which funds are to be spent, which

show how the funds received under the consolidated grant have been spent.

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the applicable statutes and regulations.

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Secretary may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the programs, and other interested institutions, organizations, and individuals in planning and operating the programs.

(b) These assurances remain in effect for the duration of the programs they cover.

(Authority: 48 U.S.C. 1469a)

Reg. 76.133 What is the reallocation authority?

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the allocation described in its consolidated grant application. However, the funds cannot be used for purposes that are not authorized under the programs in the consolidated grant under which funds are to be used and administered.

(b) If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Secretary by amending its original application to include an update of the information required under Reg. 76.131.

(Authority: 48 U.S.C. 1469a)

Reg. 76.134 What is the relationship between consolidated and non-consolidated grants?

(a) An Insular Area may request that any number of programs in Reg. 76.125(c) be included in its consolidated grant and may apply separately for assistance under any other programs listed in Reg. 76.125(c) for which it is eligible.

(b) Those programs that an Insular Area decides to exclude from consolidation—for which it must submit separate plans or applications—are implemented in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(Authority: 48 U.S.C. 1469a)

Reg. 76.135 Are there any requirements for matching funds?

The Secretary waives all requirements for matching funds for those programs that are consolidated by an Insular Area in a consolidated grant application.

(Authority: 48 U.S.C. 1469a)

Reg. 76.136 Under what programs may consolidated grant funds be spent?

Insular Areas may only use and administer funds under programs listed in Reg. 76.125(c)(1) during a fiscal year for which the Insular Area is entitled to receive funds under an appropriation for that program.

(Authority: 48 U.S.C. 1469a)

Reg. 76.137 How may carryover funds be used under the consolidated grant application?

Any funds under any applicable program which are available for obligation and expenditure in the year succeeding the fiscal year for which they are appropriated must be obligated and expended in accordance with the consolidated grant application submitted by the Insular Area for that program for the succeeding fiscal year.

(Authority: 20 U.S.C. 1225(b); 48 U.S.C. 1469a)

AMENDMENTS

Reg. 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in:

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1231g(a))

Reg. 76.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under Reg. 76.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.142 An amendment is approved on the same basis as the document being amended.

The Secretary uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Secretary uses to approve the original document.

(Authority: 20 U.S.C. 1221e-3(a)(1))

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Subpart C—How A Grant Is Made To A State

APPROVAL OR DISAPPROVAL BY THE SECRETARY

Reg. 76.201 A State plan must meet all statutory and regulatory requirements.

The Secretary approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.202 Opportunity for a hearing before a State plan is disapproved.

The Secretary may disapprove a State plan only after:

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.235 The notification of grant award.

(a) To make a grant to a State, the Secretary issues and sends to the State a notification of grant award.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(Authority: 20 U.S.C. 1221e-3(a)(1))

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

Reg. 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any reallotment to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 3474(a))
[50 FR 29330, July 18, 1985]

Reg. 76.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Secretary does not consider a reallotment in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart D—How To Apply To The State For A Subgrant

Reg. 76.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))
[Cross-Reference. See Subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

Reg. 76.301 Local educational agency general application.

A local educational agency that applies for a subgrant under a program subject to this part shall have on file with the State a general application that meets the requirements of Section 436 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232d). Approved by the Office of Management and Budget under control number 1880-0513.
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 52 FR 27804, July 24, 1987; 53 FR 49143, Dec. 6, 1988]

Reg. 76.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of:

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1))
[53 FR 49143, Dec. 6, 1988]

Reg. 76.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see Reg. 76.51), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall:

(1) Carry out the activities that the subgrantee agreed to carry out; and

(2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1232e)

Reg. 76.305 Amendments to applications.

If a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart E—How A Subgrant Is Made To An Applicant

Reg. 76.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if:

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if:

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that apply to a program, the State shall not approve the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs the State agency that administers the program shall provide an application with notice and an opportunity for a hearing before it may disapprove the application:

(1) Chapter 1 Program in Local Educational Agencies.

(2) Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(3) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(4) Strengthening Instruction in Academic Subjects in Public Schools.

(5) State-operated Programs for Handicapped Children.

(6) Assistance to States for Education of Handicapped Children.

(7) State Vocational Education Programs.

(8) State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.

(9) Federal, State and Local Partnership for Educational Improvement.

(b) *Other programs—hearings not required.* Under other programs covered by this part, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(1) Disapproval of or failure to approve the application or project in whole or in part.

(2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.* (1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6)(i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary immediately terminates all assistance to the State educational agency under the applicable program.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1231b-2, 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987; 54 FR 21775, May 19, 1989; amended at 55 FR 14816, April 18, 1990]

Subpart F—What Conditions Must Be Met By The State And Its Subgrantees?

NONDISCRIMINATION

Reg. 76.500 Federal statutes and regulations on discrimination.

A State and a subgrantee shall comply with the following statutes and regulations: [See Table 76-B this page]

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

ALLOWABLE COSTS

Reg. 76.530 General cost principles.

Subpart Q of 34 CFR Part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(Authority: 20 U.S.C. 1221e-3(a)(1))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.532 Use of funds for religion prohibited.

(a) No State or subgrantee may use its grant or subgrant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to:

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.533 Acquisition of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.534 Use of tuition and fees restricted.

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Table 76-B

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d-4)	34 CFR Part 100
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683)	34 CFR Part 106
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR Part 104
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	45 CFR Part 90

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INDIRECT COST RATES

Reg. 76.560 General indirect cost rates; exceptions.

(a) Appendices C-F to 34 CFR Part 74 include:

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 76.562 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.561 Approval of indirect cost rates.

(a) The Secretary approves an indirect cost rate for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.563 Restricted indirect cost rate—programs covered.

If a State or a subgrantee decides to charge indirect costs to a program that has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, the State or subgrantee shall use a restricted indirect cost rate computed under 34 CFR 75.564-75.568.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987; 54 FR 21776, May 19, 1989; amended at 55 FR 14816, April 18, 1990]

COORDINATION

Reg. 76.580 Coordination with other activities.

(a) A State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A State and a subgrantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The State or subgrantee shall continue its coordination during the period that it carries out the project.

(Authority: 20 U.S.C. 1221e-3(a)(1); 2890)

Reg. 76.581 Methods of coordination.

Depending on the objectives and requirements of a project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment evaluation, monitoring, technical assistance, or staff training.

(d) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(e) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(Authority: 20 U.S.C. 1221e-3(a)(1))

EVALUATION

Reg. 76.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(Authority: 20 U.S.C. 1226c, 1231a, 2831(a), 3474)
[45 FR 86298, Dec. 30, 1980; 54 FR 21776, May 19, 1989]

Reg. 76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Secretary may determine that the State or subgrantee meets the evaluation requirements of the program.

(Authority: 20 U.S.C. 1226c; 1231a)

CONSTRUCTION

Reg. 76.600 Where to find construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600-75.615.

(b) The State shall perform the functions that the Secretary performs under Reg. 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.

(c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites).

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980; 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

Reg. 76.650 Private schools; purpose of Regs. 76.651-76.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Note: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

Reg. 76.651 Responsibility of a State and a subgrantee.

(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in Reg. 76.652-76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b)(1) A State shall ensure that each subgrantee complies with the requirements in Reg. 76.651-76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who:

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with Reg. 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.
(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities:

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school:

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if:

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than project purposes.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.662 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROCEDURES FOR BYPASS

Reg. 76.670 Applicability.

The regulations in Regs. 76.671 through 76.677 apply to the following programs under which the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass: [See Table 76-C on next page]

(Authority: 20 U.S.C. 2727(b), 2972(d)-(e), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.671 Notice by the Secretary.

(a) Before taking any final action to implement a bypass under a program listed in Reg. 76.670, the Secretary provides

TABLE 76-C

CFDA number and name of program	Authorizing statute	Implementing regulations Title 34 CFR PART
84.010 Chapter 1 Program in Local Educational Agencies	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).	200
84.151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Act of 1965, as amended (20 U.S.C. 2911-2952-2976).	298
84.164 Mathematics and Science Education	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	208
84.186 State and Local Programs	Part B, Drug Free Schools and Communities Act of 1986 (20 U.S.C. 3191-3197)	None

the affected grantee and subgrantee, if appropriate, with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the grantee and subgrantee to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the grantee and subgrantee that they—

(i) Have at least 45 days after receiving the written notice to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the grantee and subgrantee by certified mail with return receipt requested.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.672 Bypass procedures.

Sections 76.673 through 76.675 contain the procedures that the Secretary uses in conducting a show cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree the modification is appropriate.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.673 Appointment and functions of a hearing officer.

(a) If a grantee or subgrantee requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the grantee, subgrantee, and representatives of the private school children of the time and place of the hearing.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.674 Hearing procedures.

(a) The following procedures apply to a show cause hearing regarding implementation of a bypass:

Editorial Note: Reproduced below is the text of selected portions of the Rehabilitation Act of 1973 as codified in Title 29 of the United States Code.

(1) The hearing officer arranges for a transcript to be taken.

(2) The grantee, subgrantee, and representatives of the private school children each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the grantee, subgrantee, representatives of the private school children, or Department officials.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.675 Posthearing procedures.

(a)(1) Within 120 days after the record of a show cause hearing is closed, the hearing officer issues a written decision on whether a bypass should be implemented.

(2) The hearing officer sends copies of the decision to the grantee, subgrantee, representatives of the private school children, and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the grantee, subgrantee, and representatives of the private school children may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.676 Judicial review of a bypass action.

If a grantee or subgrantee is dissatisfied with the Secretary's final action after a proceeding under Regs. 76.672 through 76.675, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 2727(b)(4)(B)-(D), 2972(h)(2)-(4), 2990(c), 3223(c))
[54 FR 21776, May 19, 1989]

Reg. 76.677 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines that the grantee or subgrantee will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 2727(b)(3)(D), 2972(f), 1221e-3(a)(1))
[54 FR 21776, May 19, 1989]

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

[Cross-Reference. See 34 CFR Part 74, Subpart C—Bonding and Insurance; and 34 CFR 74.144—Inventions and patents.

Reg. 76.681 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.682 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Authority: Pub. L. 89-544, as amended)

Reg. 76.683 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.684 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the day care requirements in 45 CFR Part 71 of this title.

(b) The Secretary may waive this requirement by publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.690 Energy conservation awareness.

To the extent that it is consistent with the statute and regulations for any program, the subgrantee shall consider incorporating into its program a component on energy awareness. This component may include study of the problems, solutions, and alternatives relating to the Nation's energy crisis.

(Authority: 42 U.S.C. 8373(b); E.O. No. 12185)
[45 FR 58013, Aug. 29, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart G—What Are The Administrative Responsibilities Of The State And Its Subgrantees?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

Reg. 76.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.701 The State or subgrantee administers or supervises each project.

A State or a subgrantee shall directly administer or supervise the administration of each project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.702 Fiscal control and fund accounting procedures.

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.703 When a State may begin to obligate funds.

(a) A State may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State plan is mailed or hand delivered to the Secretary in substantially approvable form.

(2) The date that the funds are first available for obligation by the Secretary.

(b)(1) The State must show one of the following as proof of mailing:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Secretary.

(2) If a State plan is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office.

(c) After determining that a State plan is in substantially approvable form, the Secretary informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.704 When certain subgrantees may begin to obligate funds.

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see Reg. 76.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under Reg. 76.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 34 CFR Part 74 (Appendices C-F).

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.705 Funds may be obligated during a "carryover period."

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: U.S.C. 1225(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Reg. 76.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with:

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1225(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Reg. 76.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

[See Table 76-D on next page]

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

REPORTS

Reg. 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR Part 74, Subparts I (financial reporting) and J (performance reporting).

(b) A state shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.722 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

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TABLE 76-D

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property
(b) Personal services by an employee of the State or subgrantee.	When the services are performed
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services . . .	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State.	On the first day of the subgrant period.

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

RECORDS

Reg. 76.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show:

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(Authority: 20 U.S.C. 1232f, 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with program requirements.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.734 Record retention period.

A State and a subgrantee shall retain records for five years after completion of the activity for which they use grant or subgrant funds.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1232f(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980 and 55 Fr 14816, April 18, 1990]

PRIVACY

Reg. 76.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under 34 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(Authority: 20 U.S.C. 1231g)

USE OF FUNDS BY STATES AND SUBGRANTEES

Reg. 76.760 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.

(b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989; 55 FR 14816, April 18, 1990]

Reg. 76.761 Federal funds may pay 100 percent of cost.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if:

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

STATE ADMINISTRATIVE RESPONSIBILITIES

Reg. 76.770 A State shall perform certain duties with respect to the applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in completing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that prevents eligible applicants from applying under the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.771 A State shall encourage eligible applicants to apply.

(a) Each State shall make a reasonable effort to encourage eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of:

(1) The availability of subgrants;

(2) The objectives of each program;

(3) The objectives of the State plan for each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures the State uses to select applications for funding.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.772 Other responsibilities of the State.

(a)A State shall:

(1) Provide technical assistance to prospective applicants and subgrantees;

(2) Assist in the evaluation of projects;

(3) Develop and use procedures to monitor each project; and

(4) Develop procedures, issue rules, or take whatever action may be necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section applies to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) This section does not apply to the program under Title I of the Elementary and Secondary Education Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27805, July 24, 1987]

COMPLAINT PROCEDURES OF THE STATE

Reg. 76.780 A State shall adopt complaint procedures.

(a) A State shall adopt written procedures for:

(1) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent onsite investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

[Cross-Reference. See Reg. 76.1 Programs to which Part 76 applies.]
(Authority: 20 U.S.C. 1221e-3(a)(1). Approved by the Office of Management and Budget under control number 1880-0513.)

Reg. 76.781 Minimum complaint procedures.

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Authority: 20 U.S.C. 1221e-3(a)(1). Approved by the Office of Management and Budget under control number 1880-0513.)

Reg. 76.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include:

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Reg. 76.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in Reg. 76.401(c)(2)-(7) apply to any request for a hearing under this section.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1231b-2)
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Subpart H—What Procedures Does The Secretary Use To Get Compliance?

Reg. 76.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(Authority: 43 Dec. Comp. Gen. 31 (1963))

Reg. 76.901 Education Appeal Board.

(a) The Education Appeal Board, established under Part E of GEPA, has the following functions:

(1) Audit appeal hearings under Section 452 of GEPA.

(2) Withholding and termination hearings under Section 453 of GEPA.

(3) Cease and desist hearings under Section 453 of GEPA.

(4) Any other proceeding designated by the Secretary.

(b) The regulations for the Education Appeal Board are in 34 CFR Part 78.

(Authority: 20 U.S.C. 1234)

Reg. 76.902 Judicial review.

After a hearing by the Secretary, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Reg. 76.910 Cooperation with audits.

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. Appendix 3, Sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e-3(a)(1), 1232f)

DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

(34 Code of Federal Regulations Part 77)

Reg.
77.1 Definitions that apply to all Department programs

(Authority: (20 U.S.C. 1221e-3(a)(1), 2831(a) and 3474, unless otherwise noted)
[45 FR 22529, Apr. 3, 1980, as amended at 45 FR 37442, June 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980; 54 FR 21776, May 19, 1989]

Reg. 77.1 Definitions that apply to all Department programs.

(a) [Reserved]

(b) Unless a statute or regulation provides otherwise, the following definitions in Part 74 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of Part 74 that contains the definition is given in parentheses.

"Budget" (74.104)
"Contract" (includes definition of "Subcontract") (74.3)
"Equipment" (74.132)
"Federally recognized Indian tribal government" (74.3)
"Grant" (74.3)
"Grantee" (74.3)
"Local government" (74.3)
"Personal property" (74.132)
"Real Property" (74.132)
"Recipient" (74.3)
"Subgrant" (74.3)
"Subgrantee" (74.3)
"Supplies" (74.132)

(c) Unless a statute or regulation private otherwise, the following definitions also apply to the regulations in this title:

"Acquisition" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

"Applicant" means a party requesting a grant or subgrant under a program of the Department.

"Application" means a request for a grant or subgrant under a program of the Department.

"Award" means an amount of funds that the Department provides under a grant or contract.

"Budget period" means an interval of time into which a project period is divided for budgetary purposes.

"Department" means the U.S. Department of Education.

"Director of the Institute of Museum Services" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

"Director of the National Institute of Education" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

"ED" means the U.S. Department of Education.

"EDGAR" means the Education Department General Administrative Regulations (34 CFR Parts 74, 75, 76, 77, and 78).

"Elementary school" means a day or residential school that provides elementary education, as determined under State law.

"Facilities" means one or more structures in one or more locations.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

"GEPA" means The General Education Provisions Act.

"Grant period" means the period for which funds have been awarded.

"Local educational agency" means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in:

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 34 CFR Parts 400, 408, 525, 526 and 527 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

"Minor remodeling" means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs.

"Nonprofit," as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

"Nonpublic," as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"Preschool" means the educational level from a child's birth to the time at which the State provides elementary education.

"Private," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"Project" means the activity described in an application.

"Project period" means the period for which the appropriate official of the Department approves a project.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"Secondary school" means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Service function," with respect to a local educational agency:

(a) Means an educational service that is performed by a legal entity—such as an intermediate agency:

(1)(i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

"State" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

"Work of art" means an item that is incorporated into facilities primarily because of its aesthetic value.

INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

(34 Code of Federal Regulations Part 79)

Reg.
79.1 What is the purpose of these regulations?
79.2 What definitions apply to these regulations?
79.3 What programs and activities of the Department are subject to these regulations?
79.4 What are the secretary's general responsibilities under the Order?
79.5 What is the Secretary's obligation with respect to federal interagency coordinations?
79.6 What procedures apply to the selection of programs and activities under these regulations?
79.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
79.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance?
79.9 How does the Secretary receive and respond to comments?
79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
79.11 What are the Secretary's obligations in interstate situations?
79.12 How may a state simplify, consolidate, or substitute federally required state plans?
79.13 [Reserved]

(Authority: 31 U.S.C. 6506; 42 U.S.C. 3334 and E.O. 12372, unless otherwise noted.)
[Source: 48 FR 29166, June 24, 1983, unless otherwise noted.]

Reg. 79.1 What is the purpose of these regulations?

(a) The regulations in this Part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

(Authority: E.O. 12372)

Reg. 79.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Education.

"Order" means Executive Order 12372, issued July 14, 1982, amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

(Authority: E.O. 12372)

Reg. 79.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

(b) If a program or activity of the Department that provides Federal financial assistance does not have implementing regulations, the regulations in this part apply to that program or activity.

(c) The following programs and activities are excluded from coverage under this part:

(1) Proposed legislation.
(2) Regulation and budget formulation.
(3) National security matters.
(4) Procurement.
(5) Direct payments to individuals.
(6) Financial transfers for which the Department has no funding discretion or direct authority to approve specific sites or projects (e.g., block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981).
(7) Research and development national in scope.
(8) Assistance to federally recognized Indian tribes.

(d) In addition to the programs and activities excluded in paragraph (c) of this section, the Secretary may only exclude a Federal financial assistance program or activity from coverage under this part if the program or activity does not directly affect State or local governments.

(Authority: E.O. 12372)
[48 FR 29166, June 24, 1983, as amended at 51 FR 20824, June 9, 1986]

Reg. 79.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Department.

(b) If a state adopts a process under the Order to review and coordinates proposed federal financial assistance, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

(Authority: E.O. 12372, Sec. 2)

Reg. 79.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the maximum extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

(Authority: E.O. 12372)

Reg. 79.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with Reg. 79.3 for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

(Authority: E.O. 12372, Sec. 2)

Reg. 79.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) [Reserved]

(b)(1) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:

(i) The state has not adopted a process under the Order; or

(ii) The assistance involves a program or activity not selected for the state process.

(2) This notice may be made by publication in the FEDERAL REGISTER or other means which the Secretary determines appropriate.

(Authority: E.O. 12372, Sec. 2)

Reg. 79.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities—

(1) At least 30 days to comment on proposed Federal financial assistance other than noncompeting continuation awards; and

(2) At least 60 days to comment on proposed Federal financial assistance other than noncompeting continuation awards.

(b) The Secretary establishes a date for mailing or hand-delivering comments under paragraph (a) of this section using one of the following two procedures:

(1) If the comments relate to continuation award applications, the Secretary notifies each applicant and each State Single Point of Contact (SPOC) of the date by which SPOC comments should be submitted.

(2) If the comments relate to applications for new grants, the Secretary establishes the date in a notice published in the FEDERAL REGISTER.

(c) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(d) Applicants for programs and activities subject to Section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

(Authority: E.O. 12372, Sec. 2)
[48 FR 29166, June 24, 1983, as amended at 51 FR 20825, June 9, 1986]

Reg. 79.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedure in Reg. 79.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a State process recommendation, and identifies it as such, for a program selected under Reg. 79.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional, or local officials and entities if there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional, and local officials and entities may submit comments to the Department. In addition, if a State process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of Reg. 79.10.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of Reg. 79.10 of this Part, if those comments are provided by a single point of contact, or directly to the Department by a commenting party.

(Authority: E.O. 12372, Sec. 2)
[48 FR 29166, June 24, 1983, as amended at 51 FR 20825, June 9, 1986]

Reg. 79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of the notification.

(Authority: E.O. 12372, Sec. 2)

Reg. 79.11 What are the Secretary's obligations in interstate situation?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding under Reg. 79.10 if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) In an interstate situation subject to this section, the Secretary uses the procedures in Reg. 79.10 if a state process provides a state process recommendation to the Department through a single point of contact.

(Authority: E.O. 12372, Sec. 2(e))

Reg. 79.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

(Authority: E.O. 12372, Sec. 2)

Reg. 79.13 [Reserved]

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UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

(34 Code of Federal Regulations Part 80)

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APPENDIX TO PART 80—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

(Authority: 20 U.S.C. 3474; OMB Circular A-102, unless otherwise noted.)
[Source: 53 FR 8071 and 8087, Mar. 11, 1988, unless otherwise noted.]
[Effective Date Note: At 53 FR 8071 and 8087, Mar. 11, 1988, Part 80 was added, effective October 1, 1988.]

Subpart A—General

Reg. 80.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

(Authority: 20 U.S.C. 3474; OMB Circular A-102).

Reg. 80.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

(Authority: 20 U.S.C. 3474; OMB Circular A-102).

Reg. 80.3 Definitions.

As used in this part:

"Accrued expenditures" means the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *"programmatic"* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means (except as used in the definitions for *"grant"* and *"subgrant"* in this section and except where qualified by *"Federal"*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF—269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Government" means a State or local government or a federally recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing consent prior to incurring specific cost.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share" when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

(1) The definition of "State" in this section is used for the purpose of determining the scope of Part 80 regulations. Some program regulations contain different definitions for "State" based on program statute eligibility requirements.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *"grant"* in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than *"equipment"* as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *"Termination"* does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplementary award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)
[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Reg. 80.4 Applicability.

(a) *General*. Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of Reg. 80.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconcilation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in Reg. 80.4(a)(3) through (8) are subject to Subpart E.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in Reg. 80.6.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by the Secretary after consultation with OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)
[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Subpart B—Pre-Award Requirements

Reg. 80.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.11 State Plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions.

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

Reg. 80.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and it it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Reg. 80.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987. [See TABLE 80-A on this page]

(Authority: 20 U.S.C. 3474; OMB Circular A-102)
[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Reg. 80.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

(Authority: 20 U.S.C. 3474; OMB Circular A-102).

Reg. 80.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions—(1) Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in Reg. 80.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in Reg. 80.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be

TABLE 80-A—

For the costs of a—	Use the principles in—
State, local or Indian tribal government	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-22.
Educational institutions	OMB Circular A-21
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services—(1) Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Reg. 80.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See Reg. 80.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Reg. Reg. 80.31 and 80.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g)(2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, Reg. 80.36 shall be followed.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Note: The requirements for non-Federal audits are contained in the Appendix to Part 80—Audit Requirements for State and Local Governments.

CHANGES, PROPERTY, AND SUBAWARDS

Reg. 80.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see Reg. 80.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes—(1) Nonconstruction projects.* Except as stated in other regulations or an award document, grantees, or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of Reg. 80.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see Reg. 80.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subject will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property

acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)
[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Reg. 80.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in Reg. 80.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per-unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120-calendar-day period the grantee shall follow Reg. 80.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6, 1988]

Reg. 80.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes;

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only:

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Reg. 80.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procedure process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed—(1) Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Reg. 80.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Reg. 80.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc, when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (all contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (all construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers.)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with Reg. 80.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grants.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 80.10;

(2) Section 80.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in Reg. 80.21; and

(4) Section 80.50.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

Reg. 80.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees

shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report—(1) Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with Reg. 80.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report—(1) Form.* (i) For grants paid by letter of credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement—(1) Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in Reg. 80.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.—(1) Grants that support construction activities paid by reimbursement method.*

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in Reg. 80.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in Reg. 80.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will pro-

vide any necessary special instruction. However, frequency and due date shall be governed by Reg. 80.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in Reg. 80.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in Reg. 80.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by Reg. 80.41(b)(2).

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see Reg. 80.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the date the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records—(1) Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)
[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Reg. 80.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see Reg. 80.35).

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.44 Termination for convenience.

Except as provided in Reg. 80.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either Reg. 80.43 or paragraph (a) of this section.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Subpart D—After-The-Grant Requirements

Reg. 80.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with Reg. 80.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(Authority: 20 U.S.C. 3474; OMB Circular A-102. Approved by the Office of Management and Budget under control number 1880-0157.)
[53 FR 49143, Dec. 6, 1988]

Reg. 80.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in Reg. 80.42;

(d) Property management requirements in Reg. Reg. 80.31 and 80.32; and

(e) Audit requirements in Reg. 80.26.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Reg. 80.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

APPENDIX TO PART 80—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

1. *Purpose*. This appendix is issued pursuant to the Single Audit Act of 1984. Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy*. The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR Part 74.

3. *Definitions*. For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

(g) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resources use is consistent with laws, regulations, and policies:

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, as described in the Attachment to this appendix.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit*. The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR Part 74.

d. The auditor shall determine whether,

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

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5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and —The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with 34 CFR Part 74, Appendix C "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments," and 34 CFR Part 74, Subpart G, "Cost Sharing or Matching."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

7. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR Part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR Part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivision. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

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10. *Illegal acts or irregularities*. If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports*. Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution*. As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports*. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs*. The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost determined in accordance with the provisions of 34 CFR Part 74, Appendix C, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions*. The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection*. In arranging for audit services State and local governments shall follow the procurement standards prescribed in 34 CFR Part 74, Subpart P, "Procurement Standards." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms*. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

ATTACHMENT TO APPENDIX

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

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Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply: [See TABLE 80-B]

[50 FR 37358, Sept. 13, 1985. Redesignated at 53 FR 8072, Mar. 11, 1988] [Effective Date Note: At 53 FR 8072, Mar. 11, 1988, Appendix G to Part 74 was redesignated as the Appendix to Part 80, effective October 1, 1988.]

TABLE 80-B

ATTACHMENT TO APPENDIX

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million
$1 billion	$2 billion	$4 million
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million
$5 billion	$6 billion	$16 million
$6 billion	$7 billion	$19 million
Over $7 billion	....	$20 million

[50 FR 37358, Sept. 13, 1985. Redesignated at 53 FR 8072, Mar. 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8072, Mar. 11, 1988, Appendix G to Part 74 was redesignated as the Appendix to Part 80, effective October 1, 1988.

GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

(34 Code of Federal Regulations Part 81)

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APPENDIX—ILLUSTRATIONS OF PROPORTIONALITY

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234-1234i, 3474(a), unless otherwise noted.)
[Source: 54 FR 19512, May 5, 1989, unless otherwise noted.]

Subpart A—General Provisions

Reg. 81.1 Purpose.

The regulations in this part govern the enforcement of legal requirements under applicable programs administered by the Department of Education and implement Part E of the General Education Provisions Act (GEPA).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.2 Definitions.

The following definitions apply to the terms used in this part:

"Administrative Law Judge" (ALJ) means a judge appointed by the Secretary in accordance with section 451(b) and (c) of GEPA.

"Applicable program" means any program for which the Secretary of Education has administrative responsibility, except a program authorized by—

(a) The Higher Education Act of 1965, as amended;

(b) The Act of September 30, 1950 (Pub. L. 874, 81st Congress), as amended; or

(c) The Act of September 23, 1950 (Pub. L. 815, 81st Congress), as amended.

"Department" means the United States Departemnt of Education.

"Disallowance decision" means the decision of an authorized Departmental official that a recipient must return funds because it made an expenditure of funds that was not allowable or otherwise failed to discharge its obligation to account properly for funds. Such a decision, referred to as a "preliminary departmental decision" in section 452 of GEPA, is subject to review by the Office of Administrative Law Judges.

"Party" means either of the following:

(a) A recipient that appeals a decision.

(b) An authorized Departmental official who issues a decision that is appealed.

"Recipient" means the recipient of a grant or cooperative agreement under an applicable program.

"Secretary " means the United States Secretary of Education.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1234(b), (c), and (f)(1); 1234a(a)(1); 1234i; 3474(a))

Reg. 81.3 Jurisdiction of the Office of Administrative Law Judges.

(a) The Office of Administrative Law Judges (OALJ) established under section 451(a) of GEPA has jurisdiction to conduct the following proceedings concerning an applicable program:

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Cease and desist hearings.

(b) The OALJ also has jurisdiction to conduct other proceedings designated by the Secretary. If a proceeding or class of proceedings is so designated, the Department publishes a notice of the designation in the Federal Register.

(Authority: 5 U.S.C. 554, 20 U.S.C. 1234(a))

Reg. 81.4 Membership and assignment to cases.

(a) The Secretary appoints Administrative Law Judges as members of the OALJ.

(b) The Secretary appoints one of the members of the OALJ to be the chief judge. The chief judge is responsible for the efficient and effective administration of the OALJ.

(c) The chief judge assigns an ALJ to each case or class of cases within the jurisdiction of the OALJ.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(b) and (c), 3474(a))

Reg. 81.5 Authority and responsibility of an Administrative Law Judge.

(a) An ALJ assigned to a case conducts a hearing on the record. The ALJ regulates the course of the proceedings and the conduct of the parties to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law.

(b) AN ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(c) An ALJ is disqualified in any case in which the ALJ has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the ALJ to be assigned to the case.

(d)(1) An ALJ may disqualify himself or herself at any time on the basis of the standards in paragraph (c) of this section.

(2) A party may file a motion to disqualify an ALJ under the standards in paragraph (c) of this section. A motion to disqualify must be accompanied by an affidavit that meets the requirements of 5 U.S.C. 556(b). Upon the filing of such a motion and affidavit, the ALJ decides the disqualification matter before proceeding further with the case.

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e-3(a)(1); 1234(d), (f)(1), and (g)(1); 3474(a))

Reg. 81.6 Hearing on the record.

(a) A hearing on the record is a process for the orderly presentation of evidence and arguments by the parties.

(b) Except as otherwise provided in this part or in a notice of designation under Reg. 81.3(b), an ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) At a party's request, the ALJ shall confer with the parties in person or by conference telephone call before determining whether an evidentiary hearing or an oral argument is needed.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.7 Non-party participation.

(a) A person or organization, other than a party, that wishes to participate in a case shall file an application to participate with the ALJ assigned to the case. The application must—

(1) Identify the case in which participation is sought;

(2) State how the applicant's interest relates to the case;

(3) State how the applicant's participation would aid in the disposition of the case; and

(4) State how the applicant seeks to participate.

(b) The ALJ may permit an applicant to participte if the ALJ determines that the applicant's participation—

(1) Will aid in the disposition of the case;

(2) Will not unduly delay the proceedings; and

(3) Will not prejudice the adjudication of the parties' rights.

(c) If the ALJ permits an applicant to participate, the ALJ permits the applicant to file briefs.

(d)(1) In addition to the participation described in paragraph (c) of this section, the ALJ may permit the applicant to participate in any or all of the following ways:

(i) Submit documentary evidence.

(ii) Participate in an evidentiary hearing afforded the parties.

(iii) Participate in an oral argument afforded the parties.

(2) The ALJ may place appropriate limits on an applicant's participation to ensure the efficient conduct of the proceedings.

(e) A non-party participant shall comply with the requirements for parties in Reg. 81.11 and Reg. 81.12.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.8 Representation.

A party to, or other participant in, a case may be represented by counsel.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.9 Location of proceedings.

(a) An ALJ may hold conferences of the parties in person or by conference telephone call.

(b) Any conference, hearing, argument, or other proceeding at which the parties are required to appear in person is held in the Washington, DC metropolitan area unless the ALJ determines that the convenience and necessity of the parties or their representatives requires that it be held elsewhere.

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.10 Ex parte communications.

A party to, or other participant in, a case may not communicate with an ALJ on any fact in issue in the case or on any matter relevant to the merits of the case unless the parties are given notice and an opportunity to participate.

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.11 Motions.

(a) To obtain an order or a ruling from an ALJ, a party shall make a motion to the ALJ.

(b) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall serve a copy of the motion on the other party on the filing date by hand-delivery or by mail.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in Reg. 81.12(d).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.12 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery or by mail.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission to an ALJ or the OALJ must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission to an ALJ or the OALJ is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.13 Mediation.

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The OALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

(1) The parties are likely to resolve some or all of the dispute; and

(2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f)(1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during mediation.

(2) A mediator may not disclose, in any proceeding under this part, information acquired as a part of his or her official mediation duties that relates to any fact in issue in the case or any matter relevant to the merits of the case.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1) and (h), 3474(a))

Reg. 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or the approval of a settlement agreement, the ALJ grants the stay.

(b) Evidence of conduct or statements made during settlement negotiations is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 554(c)(1), 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.15 Evidence.

(a) The Federal Rules of Evidence do not apply to proceedings under this part. However, the ALJ accepts only evidence that is—

(1) Relevant;

(2) Material;

(3) Not unduly repetitious; and

(4) Not inadmissible under Reg. 81.13 or Reg. 81.14.

(b) The ALJ may take official notice of facts that are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(Authority: 5 U.S.C. 556(d) and (e); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.16 Discovery.

(a) The parties to a case are encouraged to exchange relevant documents and information voluntarily.

(b) The ALJ, at a party's request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If a compulsory discovery is permissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following:

(1) Make relevant documents available for inspection and copying by the party making the request.

(2) Answer written interrogatories that inquire into relevant matters.

(3) Have depositions taken.

(d) The ALJ may issue a subpoena to enforce an order described in this section and may apply to the appropriate court of the United States to enforce the subpoena.

(e) The ALJ may not compel the discovery of information that is legally privileged.

(f)(1) The ALJ limits the period for discovery to not more than 90 days but may grant an extension for good cause.

(2) At a party's request, the ALJ may set a specific schedule for discovery.

(Authority: 20 U.S.C. 1234(f)(1) and (g))

Reg. 81.17 Privileges.

The privilege of a person or governmental organization not to produce documents or provide information in a proceeding under this part is governed by the principles of common law as interpreted by the courts of the United States.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and the transcript made available to the parties upon request at no charge.

(b) The record of a hearing on the record consists of—

(1) All papers filed in the proceeding;

(2) Documentary evidence admitted by the ALJ;

(3) The transcript of any evidentiary hearing or oral argument; and

(4) Rulings, orders, and subpoenas issued by the ALJ.

(Authority: 5 U.S.C. 556(e), 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.19 Costs and fees of parties.

The Equal Access to Justice Act, 5 U.S.C. 504, applies by its terms to proceedings under this part. Regulations under that statute are in 34 CFR Part 21.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f), 3474(a))

Subpart B—Hearings For Recovery Of Funds

Reg. 81.20 Basis for recovery of funds.

(a) Sul1bject to the provisions of Reg. 81.21, an authorized Departmental official requires a recipient to return funds to the Department if—

(1) The recipient made an unallowable expenditure of funds under a grant or cooperative agreement; or

(2) The recipient otherwise failed to discharge its obligation to account properly for funds under a grant or cooperative agreement.

(b) An authorized Departmental official may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

(Authority: 20 U.S.C. 1234a(a)(1) and (2))

Reg. 81.21 Measure of recovery.

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

(a) Meets the standards for proportionality in Reg. 81.22;

(b) In the case of a State agency or a local educational agency, excludes any amount attributable to mitigating circumstances under the standards in Reg. 81.23; and

(c) Excludes any amount expended in a manner not authorized by law more than five years before the recipient received the notice of a disallowance decision under Reg. 81.24.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(k), 1234b (a) and (b), 3474(a))
[54 FR 19512, May 5, 1989, as amended at 54 FR 21726, May 19, 1989]

Reg. 81.22 Proportionality.

(a)(1) A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which it received the grant or cooperative agreement.

(2) An identifiable Federal interest under paragraph (a)(1) of this section includes, but is not limited to, the following:

(i) Serving only eligible beneficiaries.

(ii) Providing only authorized services or benefits.

(iii) Complying with expenditure requirements and conditions, such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements.

(iv) Preserving the integrity of planning, application, recordkeeping, and reporting requirements.

(v) Maintaining accountability for the use of funds.

(b) The appendix to this part contains examples that illustrate how the standards for proportionality apply. The examples present hypothetical cases and do not represent interpretations of any actual program statute or regulation.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(a) and 3474(a))

Reg. 81.23 Mitigating circumstances.

(a) A recipient that is a State or local educational agency and that has made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to the mitigating circumstances described in paragraph (b), (c), or (d) of this section.

(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The guidance was provided in response to a specific written request from the recipient that was submitted to the Department at the address provided by notice published in the Federal Register under this section:

(2) The guidance was provided by a Departmental official authorized to provide the guidance, as described by that notice;

(3) The recipient actually relied on the guidance as the basis for the conduct that constituted the violation; and

(4) The recipient's reliance on the guidance was reasonable.

(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Dpeartment's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient in good faith submitted a written request for guidance with respect to the legality of a proposed expenditure or practice;

(2) The request was submitted to the Department at the address provided by notice published in the Federal Register under this section;

(3) The request—

(i) Accurately described the proposed expenditure or practice; and

(ii) Included the facts necessary for the Department's determination of its legality;

(4) The request contained the certification of the chief legal officer of the appropriate State educational agency that the officer—

(i) Examined the proposed expenditure or practice; and

(ii) Believed it was permissible under State and Federal law applicable at the time of the certification;

(5) The recipient reasonably believed the proposed expenditure or practice was permissible under State and Federal law applicable at the time it submitted the request to the Department;

(6) No Departmental official authorized to provide the requested guidance responded to the request within 90 days of its receipt by the Department; and

(7) The recipient made the proposed expenditure or engaged in the proposed practice after the expiration of the 90-day period.

(d) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the recipient's compliance with a judicial decree from a court of competent jurisdiction. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient was legally bound by the decree;

(2) The recipient actually relied on the decree when it engaged in the conduct that constituted the violation; and

(3) The recipient's reliance on the decree was reasonable.

(e) If a Departmental official authorized to provide the requested guidance responds to a request described in paragraph (c) of this section more than 90 days after its receipt, the recipient that made the request shall comply with the guidance at the earliest practicable time.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(b), 3474(a))

Reg. 81.24 Notice of a disallowance decision.

(a) If an authorized Departmental official decides that a recipient must return funds under Reg. 81.20, the official gives the recipient written notice of a disallowance decision. The offcial sends the notice by certified mail, return receipt requested, or other means that ensure proof of receipt.

(b)(1) The notice must state a prima facie case for the recovery of funds.

(2) For the purpose of this section, a prima facie case is a statement of the law and the facts that, unless rebutted, is sufficient to sustain the conclusion drawn in the notice. The facts may be set out in the notice or in a document that is identified in the notice and available to the recipient.

(3) A statement that the recipient failed to maintain records required by law or failed to allow an authorized representative of the Secretary access to those records constitutes a prima facie case for the recovery of the funds affected.

(i) If the recipient failed to maintain records, the statement must briefly describe the types of records that were not maintained and identify the recordkeeping requirement that was violated.

(ii) If the recipient failed to allow access to records, the statement must briefly describe the recipient's actions that constituted the failure and identify the access requirement that was violated.

(c) The notice must inform the recipient that it may—

(1) Obtain a review of the disallowance decision by the OALJ; and

(2) Request mediation under Reg. 81.13.

(d) The notice must describe—

(1) The time available to apply for a review of the disallowance decision; and

(2) The procedure for filing an application for review.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(a), 3474(a))

Reg. 81.25 Reduction of claims.

The Secretary or an authorized Departmental official as appropriate may, after the issuance of a disallowance decision, reduce the amount of a claim established under this subpart by—

(a) Redetermining the claim on the basis of the proper application of the law, including the standards for the measure of recovery under Reg. 81.21, to the facts;

(b) Compromising the claim under the Federal Claims Collection Standards in 4 CFR Part 103; or

(c) Compromising the claim under Reg. 81.26, if applicable.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a); 31 U.S.C. 3711)

Reg. 81.26 Compromise of claims under General Education Provisions Act.

(a) The Secretary or an authorized Departmental official as appropriate may compromise a claim established under this subpart without following the procedures in 4 CFR Part 103 if—

(1)(i) The amount of the claim does not exceed $200,000; or

(ii) The difference between the amount of the claim and the amount agreed to be returned does not exceed $200,000; and

(2) The Secretary or the official determines that—

(i) The collection of the amount by which the claim is reduced under the compromise would not be practical or in the public interest; and

(ii) The practice that resulted in the disallowance decision has been corrected and will not recur.

(b) Not less than 45 days before compromising a claim under this section, the Department publishes a notice in the Federal Register stating —

(1) The intention to compromise the claim; and

(2) That interested persons may comment on the proposed compromise.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a))

Reg. 81.27 Application for review of a disallowance decision

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the OALJ.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision. Upon receipt of a copy of the filed material, the authorized Departmental official who made the disallowance decision provides the ALJ with a copy of any document identified in the notice under Reg. 81.24(b)(2).

(c) An application for review must contain—

(1) A copy of the disallowance decision of which review is sought;

(2) A statement certifying the date the recipient received the notice of that decision;

(3) A short and plain statement of the disputed issues of law and fact, the recipient's position with respect to these issues, and the disallowed funds the recipient contends need not be returned; and

(4) A statement of the facts and the reasons that support the recipient's position.

(d) The ALJ who considers a timely application for review that substantially complies with the requirements of paragraph (c) of this section may permit the recipient to supplement or amend the application with respect to issues that were timely raised. Any requirement to return funds that is not timely appealed becomes the final decision of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(b)(1), 3474(a))

Reg. 81.28 Consideration of an application for review.

(a) The ALJ assigned to the case under Reg. 81.4 considers an application for review of a disallowance decision.

(b) The ALJ decides whether the notice of a disallowance decision meets the requirements of Reg. 81.24, as provided by section 451(e) of GEPA.

(1) If the notice does not meet those requirements, the ALJ—

(i) Returns the notice, as expeditiously as possible, to the authorized Departmental official who made the disallowance decision;

(ii) Gives the official the reasons why the notice does not meet the requirements of Reg. 81.24; and

(iii) Informs the recipient of the ALJ's decision by certified mail, return receipt requested.

(2) An authorized Departmental official may modify and reissue a notice that an ALJ returns.

(c) If the notice of a disallowance decision meets the requirements of Reg. 81.24, the ALJ decides whether the application for review meets the requirements of Reg. 81.27.

(1) If the application, including any supplements or amendments under Reg. 81.27(d), does not meet those requirements, the disallowance decision becomes the final decision of the Department.

(2) If the application meets those requirements, the ALJ—

(i) Informs the recipient and the authorized Departmental official that the OALJ has accepted jurisdiction of the case; and

(ii) Schedules a hearing on the record.

(3) The ALJ informs the recipient of the disposition of its application for review by certified mail, return receipt requested. If the ALJ decides that the application does not meet the requirements of Reg. 81.27, the ALJ informs the recipient of the reasons for the decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(c) and (f)(1), 1234a(b), 3474(a))

Reg. 81.29 Submission of evidence.

(a) The ALJ schedules the submission of the evidence, whether oral or documentary, to occur within 90 days of the OALJ's receipt of an acceptable application for review under Reg. 81.27.

(b) The ALJ may waive the 90-day requirement for good cause.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(c), 3474(a))

Reg. 81.30 Burden of proof.

If the OALJ accepts jurisdiction of a case under Reg. 81.28, the recipient shall present its case first and shall have the burden of proving that the recipient is not required to return the amount of funds that the disallowance decision requires to be returned because—

(a) An expenditure identified in the disallowance decision as unallowable was allowable;

(b) The recipient discharged its obligation to account properly for the funds;

(c) The amount required to be returned does not meet the standards for proportionality in Reg. 81.22;

(d) The amount required to be returned includes an amount attributable to mitigating circumstances under the standards in Reg. 81.23; or

(e) The amount required to be returned includes an amount expended in a manner not authorized by law more than five years before the recipient received the notice of the disallowance decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(b)(3), 1234b(b)(1), 3474(a))

Reg. 81.31 Initial decision.

(a) The ALJ makes an initial decision based on the record.

(b) The initial decision includes the ALJ's findings of fact, conclusions of law, and reasoning on all material issues.

(c) On the day the ALJ makes the initial decision, the ALJ—

(1) Sends the initial decision to the Secretary; and

(2) Sends the initial decision to each of the parties by hand-delivery or by certified mail, return receipt requested.

(d) For the purpose of this part, "initial decision" includes an ALJ's modified decision after the Secretary's remand of a case.

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

Reg. 81.32 Petition for review of an initial decision.

(a) If a party wishes to obtain the Secretary's review of the initial decision of an ALJ, the party files a petition for review with the OALJ, which sends the petition to the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision. The party shall file its petition by hand-delivery or by overnight or express mail.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand-delivery or by overnight or express mail.

(d) A petition for review must contain—

(1) The identity of the initial decision of which review is sought; and

(2) A statement of the reasons asserted by the party for affirming the initial decision, modifying it, or setting it aside in whole or in part.

(e)(1) A party may respond to a petition for review by filing a statement of its views on the issues raised in the petition with the OALJ not later than 15 days after the date it receives the petition. The OALJ sends the statement to the Secretary.

(2) A party shall serve a copy of its statement of views on the other party on the filing date by hand-delivery or by overnight or express mail.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(e), 3474(a))
[54 FR 19512, May 5, 1989, as amended at 54 FR 21726, May 19, 1989]

Reg. 81.33 Review by the Secretary.

(a) The Secretary reviews the initial decision of an ALJ on the petition of a party under Reg. 81.32. An interlocutory decision of an ALJ is not subject to review except as a part of a review of the ALJ's initial decision.

(b) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case filed during the review process.

(c)(1) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(2) The Secretary, for good cause, may remand the case to the ALJ to take further evidence. The ALJ may make new or modified findings of fact and may modify the initial deci-

sion. The new or modified findings, if supported by substantial evidence, are conclusive.

(3) A party may not introduce new evidence after an initial decision unless the Secretary determines that extraordinary circumstances made the introduction of the evidence during the proceeding before the ALJ impossible. If the Secretary permits the introduction of new evidence, the Secretary remands the case to the ALJ.

(d) The Secretary, for good cause, may remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(e)(1) If the Secretary modifies or sets aside an initial decision, in whole or in part, the Secretary's decision includes a statement of the reasons that support it.

(2) The Secretary gives a decision to modify, remand, or set aside to the OALJ, which sends the decision to each of the parties by hand-delivery or by mail. If the decision is mailed, the OALJ sends it certified mail, return receipt requested.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(d), 3474(a))
[54 FR 19512, May 5, 1989, as amended at 54 FR 21726, May 19, 1989]

Reg. 81.34 Final decision of the Department.

(a) The ALJ's initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ's decision unless the Secretary modifies, sets aside, or remands the decision during the 60-day period.

(b) If the Secretary modifies or sets aside the ALJ's initial decision, the Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(g), 3474(a))

Reg. 81.35 Collection of claims.

(a) An authorized Departmental official collects a claim established under this subpart by using the standards and procedures in 34 CFR Part 30.

(b) A claim established under this subpart may be collected—

(1) 30 days after a recipient receives notice of a disallowance decision if the recipient fails to file an acceptable application for review under Reg. 81.27; or

(2) On the date of the final decision of the Department under Reg. 81.34 if the recipient obtains review of a disallowance decision.

(c) The Department takes no collection action pending judicial review of a final decision of the Department under section 458 of GEPA.

(d) If a recipient obtains review of a disallowance decision under Reg. 81.28, the Department does not collect interest on the claim for the period between the date of the disallowance decision and the date of the final decision of the Department under Reg. 81.34.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(f)(1) and (2), (i) and (l)

APPENDIX—ILLUSTRATIONS OF PROPORTIONALITY

(1) *Ineligible beneficiaries.* A State uses 15 percent of its grant to meet the special educational needs of children who were migratory, but who have not migrated for more than five years as a Federal program statute requires for eligibility to participate in the program. Result: Recovery of 15 percent of the grant—all program funds spent for the benefit of those children. Although the services were authorized, the children were not eligible to receive them.

(2) *Ineligible beneficiaries.* A Federal program designed to meet the special educational needs of gifted and talented children requires that at least 80 percent of the children served in any project must be identified as gifted or talented. A local educational agency (LEA) conducts a project in which 76 students are identified as gifted or talented and 24 are not. The project was designed and implemented to meet the special educational needs of gifted and talented students. Result: The LEA must return five percent of the project costs. The LEA provided authorized services for a project in which the 76 target students had to constitute at least 80 percent of the total. Thus, the maximum number of non-target students permitted was 19. Project costs relating to the remaining five students must be returned.

(3) *Ineligible beneficiaries.* Same as the example in paragraph (2) of this section, except that only 15 percent of the children were identified as gifted or talented. On the basis of the low percentage of these children and other evidence, the authorized Departmental official finds that the project as a whole did not address their special educational needs and was outside the purpose of the statute. Result: The LEA must return its entire award. The difference between the required percentage of gifted and talented children and the percentage actually enrolled is so substantial that, if consistent with other evidence, the official may reasonably conclude the entire grant was misused.

(4) *Ineligible beneficiaries.* Same as the example in paragraph (2) of this section, except that 60 percent of the children were identified as gifted or talented, and it is not clear whether the project was designed or implemented to meet the special educational needs of these children. Result: If it is determined that the project was designed and implemented to serve their special educational needs, the LEA must return 25 percent of the project costs. A project that included 60 target children would meet the requirement that 80 percent of the children served be gifted and talented if it included no more than 15 other children. Thus, while the LEA provided authorized services, only 75 percent of the beneficiaries were authorized to participate in the project (60 target children and 15 others). If the authorized Departmental official, after examining all the relevant facts, determines that the project was not designed and implemented to serve the special educational needs of gifted or talented students, the LEA must return its entire award because it did not provide services authorized by the statute.

(5) *Unauthorized activities.* An LEA uses ten percent of its grant under a Federal program that authorizes activities only to meet the special educational needs of educationally deprived children to pay for health services that are available to all children in the LEA. All the children who use the Federally funded health services happen to be educationally deprived, and thus eligible to receive program services. Result: Recovery of ten percent of the grant—all program funds spent for the health services. Although the children were eligible to receive program services, the health services were unrelated to a special educational need and, therefore, not authorized by law.

(6) *Set-aside requirement.* A State uses 22 percent of its grant for one fiscal year under a Federal adult education program to provide programs of equivalency to a certificate of graduation from a secondary school. The adult education program statute restricts those programs to no more than 20 percent of the State's grant. Result: Two percent of the State's grant must be returned. Although all 22 percent of the funds supported adult education, the State had no authority to spend more than 20 percent on secondary school equivalency programs.

(7) *Set-aside requirement.* A State uses eight percent of its basic State grant under a Federal vocational education program to pay for the excess cost of vocational education services and activities for handicapped individuals. The program statute requires a State to use ten percent of its basic State grant for this purpose. Result: The State must return two percent of its basic State grant, regardless of how it was used. Because the State was required to spend that two percent on services and activities for handicapped individuals and did not do so, it diverted those funds from their intended purposes, and the Federal interest was harmed to that extent.

(8) *Excess cost requirement.* An LEA uses funds reserved for the disadvantaged under a Federal vocational education program to pay for the cost of the same vocational education services it provides to non-disadvantaged

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individuals. The program statute requires that funds reserved for the disadvantaged must be used to pay only for the supplemental or additional costs of vocational education services that are not provided to other individuals and that are required for disadvantaged individuals to participate in vocational education. Result: All the funds spent on the disadvantaged must be returned. Although the funds were spent to serve the disadvantaged, the funds were available to pay for only the supplemental or additional costs of providing services to the disadvantaged.

(9) *Maintenance-of-effort requirement.* An LEA participates in a Federal program in fiscal year 1988 that requires it to maintain its expenditures from non-Federal sources for program purposes to receive its full allotment. The program statute requires that non-Federal funds expended in the first preceding fiscal year must be at least 90 percent of non-Federal funds expended in the second preceding fiscal year and provides for a reduction in grant amount proportional to the shortfall in expenditures. No waiver of the requirement is authorized. In fiscal year 1988 the LEA spent $100,000 from non-Federal sources for program purposes; in fiscal year 1987, only $87,000. Result: The LEA must return 1/30 of its fiscal year 1988 grant—the amount of its grant that equals the proportion of its shortfall ($3,000) to the required level of expenditures ($90,000). If, instead, the statute made maintenance of expenditures a clear condition of the LEA's eligibility to receive funds and did not provide for a proportional reduction in the grant award, the LEA would be required to return its entire grant.

(10) *Supplanting prohibition.* An LEA uses funds under a Federal drug education program to provide drug abuse prevention counseling to students in the eighth grade. The LEA is required to provide that same counseling under State law. Funds under the Federal program statute are subject to a supplement-not-supplant requirement. Result: All the funds used to provide the required counseling to the eighth-grade students must be returned. The Federal funds did not increase the total amount of spending for program purposes because the counseling would have been provided with non-Federal funds if the Federal funds were not available.

(11) *Matching requirement.* A State receives an allotment of $90,000 for fiscal year 1988 under a Federal adult education program. It expends its full allotment and $8,000 from its own resources for adult education. Under the Federal statute, the Federal share of expenditures for the State's program is 90 percent. Result: The State must return the unmatched Federal funds, or $18,000. Expenditure of a $90,000 Federal allotment required $10,000 in matching State expenditures, $2,000 more than the State's actual expenditures. At a ratio of one State dollar for every nine Federal dollars, $18,000 in Federal funds were unmatched.

(12) *Application requirements.* In order to receive funds under a Federal program that supports a wide range of activities designed to improve the quality of elementary and secondary education, an LEA submits an application to its State educational agency (SEA) for a subgrant to carry out school-level basic skills development programs. The LEA submits its application after conducting an assessment of the needs of its students in consultation with parents, teachers, community leaders, and interested members of the general public. The Federal program statute requires the application and consultation processes. The SEA reviews the LEA's application, determines that the proposed programs are sound and the application is in compliance with Federal law, and approves the application. After the LEA receives the subgrant, it unilaterally decides to use 20 percent of the funds for gifted and talented elementary school students—an authorized activity under the Federal statute. However, the LEA does not amend its application. Result: 20 percent of the LEA's subgrant must be returned. The LEA had no legal authority to use Federal funds for programs or activities other than those described in its approved application, and its actions with respect to 20 percent of the subgrant not only impaired the integrity of the application process, but caused significant harm to other Federal interests associated with the program as follows: the required planning process was circumvented because the LEA did not consult with the specified local interests; program accountability was impaired because neither the SEA nor the various local interests that were to be consulted had an opportunity to review and comment on the merits of the gifted and talented program activities, and the LEA never had to justify those activities to them; and fiscal accountability was impaired because the SEA and those various local interests were, in effect, misled by the LEA's unamended application regarding the expenditure of Federal funds.

(13) *Harmless violation.* Under a Federal program, a grantee is required to establish a 15-member advisory council of affected teachers, school administrators, parents, and students to assist in program design, monitoring, and evaluation. Although the law requires at least three student members of the council, a grantee's council contains only two. The project is carried out, and no damage to the project attributable to the lack of a third student member can be identified. Result: No financial recovery is required, although the grantee must take other appropriate steps to come into compliance with the law. The grantee's violation has not measurably harmed a Federal interest associated with the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(a), 3474(a))

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GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS

FOR DRUG FREE WORKPLACE (GRANTS)

(34 Code of Federal Regulations Part 85)

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APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

(Authority: Executive Order 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D 41 U.S.C. 701 *et seq.*); 20 U.S.C. 3474, 1221e-3(a)(1)).
[Source: 53 FR 19191 and 19204, May 26, 1988; 54 FR 4960, Jan. 31, 1989, unless otherwise noted.
[Effective Date Note: At 53 FR 19191 and 19204, May 26, 1988, Part 85 was added, effective October 1, 1988.]

Subpart A—General

Reg. 85.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Except as provided in Reg. 85.200, Debarment or Suspension, Reg. 85.201, Treatment of Title IV, HEA participation, and Reg. 85.215, Exception provision, debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in Reg. 85.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474) [53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19191, May 26, 1988]

Reg. 85.105 Definitions.

(a) *Adequate evidence*. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate*. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency*. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment*. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction*. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment*. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official*. An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment*. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible*. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings*. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List*. The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice*. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant*. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person*. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence*. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal*. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal*. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent*. A person against whom a debarment or suspension action has been initiated.

(s) *State*. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official*. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension*. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded*. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *ED*. The U.S. Department of Education.

(Authority: E.O. 12549; 20 U.S.C. 3474)
[53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

Reg. 85.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transactions*. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction*. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction*. A lower tier covered transaction is:

(a) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(b) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(c) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) *Exceptions*. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections*. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," Reg. 85.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in Reg. 85.110(a). Regulations 85.325, "Scope of debarment," and 85.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities*. Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart B—Effect Of Action

Reg. 85.200 Debarment or suspension.

(a) *Primary covered transactions*. Except to the extent prohibited by law and subject to Reg. 85.201, Treatment of Title IV, HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, ED shall not enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to Reg. 85.215.

(b) *Lower tier covered transactions*. Except to the extent prohibited by law and subject to Reg. 85.210, Treatment of Title IV, HEA participation, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see Reg. 85.110(a)(1)(ii)) for the period of their debarment or suspension. Such persons shall also be excluded from all contracts to provide federally-required audit services regardless of contract amount.

(c) *Exceptions*. Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (b)(1), 1094(c)(1)(D), 3474) [53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

Reg. 85.201 Treatment of Title IV, HEA participation.

(a)(1) The debarment of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554-557 (formal adjudication requirements under the Administrative Procedures Act) terminates the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554-557 suspends the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(b)(1) Except as provided in paragraph (a) of this section, the debarment, suspension, proposed debarment, or proposed suspension of an educational institution or lender under E.O. 12549 does not affect the eligibility of the institution or lender to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(2) The Secretary initiates a debarment or suspension proceeding under Reg. 85.316 or Reg. 85.414, respectively, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (b)(1), 1094(c)(1)(D), 3474) [53 FR 19192, May 26, 1988]

Reg. 85.205 Ineligible persons.

Persons who are ineligible, as defined in Reg. 85.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.210 Voluntary exclusion.

Persons who accept voluntary exclusions under Reg. 85.315 are excluded in accordance with the terms of their settlements. ED shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.215 Exception provisions.

ED may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and Reg. 85.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with Reg. 85.505(a).

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Except as provided in Reg. 85.201, Treatment of Title IV, HEA participation, and Reg. 85.215, Exception provision, the Secretary shall not, and participants shall not, renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible or voluntarily excluded.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (b)(1), 1094(c)(1)(D), 3474) [53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

Reg. 85.225 Failure to adhere to restrictions.

Except as permitted under Reg. 85.215 or Reg. 85.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart C—Debarment

Reg. 85.300 General.

The debarring official may debar a person for any of the causes in Reg. 85.305, using procedures established in Regs. 85.310 through 85.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of Regs. 85.300 through 85.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal action taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in Reg. 85.215 or Reg. 85.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under Reg. 85.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in Reg. 85.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

(Authority: E.O. 12549; 20 U.S.C. 3474)
[54 FR 4960, Jan. 31, 1989]

Reg. 85.310 Procedures.

ED shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in Regs. 85.311 through 85.314.

(Authority: E.O. 12549; 320 U.S.C. 3474)

Reg. 85.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under Reg. 85.305 for proposing debarment;

(d) Of the provisions of Reg. 85.311 through Reg. 85.314, and any other ED procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in Reg. 85.215 or the debarment or suspension is against—

(A) An educational institution under procedures that do not meet the requirements of Reg. 85.201(a); or

(B) A lender participating in the Title IV, Part B, HEA program.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474) [53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

Reg. 85.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, ED may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.316 Procedures for Title IV, HEA debarments.

(a)(1) If the Secretary debars an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the debarment to ensure that the debarment also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in Reg. 85.312, Notice of proposed debarment, and Reg. 85.314(d), Notice of debarring official's decision.

(ii) Instead of the procedures in Reg. 85.313 and Reg. 85.314(a)-(c), the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the debarring official for proceeding under this section.

(b) On appeal from a decision debarring an educational institution, the Secretary issues a final decision after all parties have filed their written materials with the Secretary.

(c) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the debarring official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for debarment as set forth in Reg. 85.305.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474) [53 FR 19192, May 26, 1988]

Reg. 85.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (see 85.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of Regs. 85.311 through 85.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(Authority: E.O. 12549; 20 U.S.C. 3474)
[54 FR 4960, Jan. 1, 1989]

Reg. 85.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see Regs. 85.311 through 85.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fradulent, criminal, or officer seriously improper conduct of a participant may be imputed to any other, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture*: The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture grant pursuant to a joint application or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart D—Suspension

Reg. 85.400 General.

(a) The suspending official may suspend a person for any of the causes in Reg. 85.405 using procedures established in Regs. 85.410 through 85.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in Reg. 85.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of Regs. 85.400 through 85.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in Reg. 85.305(a); or

(2) That a cause for debarment under Reg. 85.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* ED shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in Regs. 85.411 through 85.413.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

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(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government deals with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under Reg. 85.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of Regs. 85.411 through 85.413 and any other ED procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.412 Opportunity to contest suspension.

(a) *Suspension in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed period of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see Reg. 85.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.

(a) *Title IV E.O. 12549 suspensions.* (1) If the Secretary suspends an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the suspension to ensure that the suspension also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in Reg. 85.411, Notice of suspension.

(ii) Instead of the procedures in Regs. 85.412, 85.413, and 85.415, the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the suspending official for proceeding under this section.

(3) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the suspending official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for suspension under E.O. 12549 as set forth in Reg. 85.405.

(b) *Continued assistance under Title IV, HEA.* The institution may continue its participation in the Title IV programs until the procedures described in paragraph (a) of this section, except for those relating to appeals to the Secretary, have been completed, unless the Secretary takes an emergency action under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)
[53 FR 19193, May 26, 1988]

Reg. 85.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see Reg. 85.325), except that the procedures of Regs. 85.410 through 85.413 shall be used in imposing a suspension.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart E—Responsibilities Of GSA, ED And Participants

Reg. 85.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.505 ED responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which ED has granted exceptions under Reg. 85.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in Reg. 85.500(b) and of the exceptions granted under Reg. 85.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) ED officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) ED officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Reg. 85.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #)

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to ED if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart F—Drug-Free Workplace Requirements (Grants)

Reg. 85.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

Reg. 85.605 Definitions.

(a) Except as amended in this section, the definitions of Reg. 85.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

Reg. 85.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

Reg. 85.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under Reg. 85.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

Reg. 85.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in Reg. 85.615 and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see Reg. 85.320(a)(2) of this part).

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

Reg. 85.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

Reg. 85.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

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(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding
Drug-Free Workplace Requirements
Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

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Place of Performance
(Street address, city,
county, state, zip code)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant. [54 FR 4960, Jan. 31, 1989]

(Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1)).
[54 FR 4960, Jan. 31, 1989]

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FAMILY EDUCATIONAL RIGHTS AND PRIVACY
(34 Code of Federal Regulations Part 99)

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99.66 What are the responsibilities of the Office in the enforcement process?
99.67 How does the Secretary enforce decisions?

(Authority: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.)
[Source: 53 FR 11942, Apr. 11, 1988, unless otherwise noted.]

Subpart A—General

Reg. 99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that—

(1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect

TABLE 99-A

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Programs	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research.	The Rehabilitation Act of 1973, as amended. (29 U.S.C. 700, *et seq.*).	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College Housing	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, *e seq.*).	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, RegionalEducational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Parts 700, 706-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988: [See TABLE 99-A above]

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

Reg. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

Reg. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to—

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

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"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under Reg. 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are—

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include—

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are—

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that—

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are—

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

Reg. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g).

Reg. 99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

Reg. 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include—

(1) How the agency or institution informs parents and students of their rights, in accord with Reg. 99.7;

(2) How a parent or eligible student may inspect and review education records under Reg. 99.10, including at least—

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in Reg. 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under Reg. 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by Reg. 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under Reg. 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under Reg. 99.20, to obtain a hearing under Reg. 99.21(a), and to add a statement to the record under Reg. 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Authority: 20 U.S.C. 1232g(e) and (f))
[53 FR 19368, May 27, 1988]
(Approved by the Office of Management and Budget under control number 1880-0508)

Reg. 99.7 What must an educational agency or institution include in its annual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to—

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under Reg. 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under Reg. 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under Reg. 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e))
[53 FR 19368, May 27, 1988]
(Approved by the Office of Management and Budget under control number 1880-0508)

Subpart B—What Are The Rights Of Inspection And Review Of Education Records?

Reg. 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under Reg. 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Reg. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

Reg. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

Reg. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are—

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's—

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if—

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall—

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(iii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

Subpart C—What Are The Procedures For Amending Education Records?

Reg. 99.20 How can a parent or eligible student request amendment of the student's educational records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Reg. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))
[53 FR 19368, May 27, 1988]

Reg. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall—

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

Reg. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Reg. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Reg. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D—May An Educational Agency Or Institution Disclose Personally Identifiable Information From Education Records?

Reg. 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in Reg. 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent of an eligible student before it discloses personally identifiable information from the student's education records.

(b) The written consent must—

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section—

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2)(A))

Reg. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Reg. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Reg. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Reg. 99.35, to authorized representatives of—

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Reg. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in Reg. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1) and (b)(2)(B))
[53 FR 19368, May 27, 1988]

Reg. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include—

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Reg. 99.33(b), the record of the disclosure required under this section must include—

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Reg. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Reg. 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to—

(1) The parent or eligible student;

(2) A school official under Reg. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))
(Approved by the Office of Management and Budget under control number 1880-0508)

Reg. 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if—

(1) The disclosures meet the requirements of Reg. 99.31; and

(2) The educational agency or institution has complied with the requirements of Reg. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under Reg. 99.31(a)(11) or to disclosures to a parent or student under Reg. 99.31(a)(12).

(d) Except for disclosures under Reg. 99.31(a)(11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Reg. 99.34. What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Reg. 99.31(a)(2) shall—

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under Reg. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

Reg. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Reg. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must—

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if—

(1) The parent or eligible student has given written consent for the disclosure under Reg. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

Reg. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(i)(1))
[53 FR 19368, May 27, 1988]

Reg. 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of—

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A) and (B))

Subpart E—What Are The Enforcement Procedures?

Reg. 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to—

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g(f) and (g), 1234)

Reg. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

Reg. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g(f) and (g))

Reg. 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1232g(g))

Reg. 99.64 What is the complaint procedure?

(a) A complaint filed under Reg. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(Authority: 20 U.S.C. 1232g(f))

Reg. 99.65 What is the content of the notice of complaint issued by the Office?

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section—

(1) Includes the substance of the alleged violation; and

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

(Authority: 20 U.S.C. 1232g(g))

Reg. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

Reg. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under Reg. 99.66(c), the Secretary may take an action authorized under 34 CFR Part 78, including—

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under Reg. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.

(Authority: 20 U.S.C. 1232g(g))
[53 FR 19368, May 27, 1988]

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

(34 Code of Federal Regulations Part 104)

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(Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 14050, as amended by Pub. L. 94-142, 89 Stat. 795.
[Source: 45 FR 30936, May 9, 1980, unless otherwise noted.]

Editorial Note: For an interpretation document affecting Part 104, see 46 FR 4912, Jan. 19, 1981. The effective date of the interpretation was deferred to March 30, 1981, at 46 FR 12495, Feb. 17, 1981. The effective date was again deferred to May 10, 1981, at 46 FR 18975, March 27, 1981, and deferred until further notice at 46 FR 25614, May 8, 1981.

Subpart A—General Provisions

Reg. 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Reg. 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

Reg. 104.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 *et seq*.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Office for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including;

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment, which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive, genito-urinary; hermic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped persons" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of an age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under Sec. 612 of the Education of the Handicapped Act, and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

Reg. 104.4 Discrimination prohibited.

(a) *General*. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited*. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination of the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

Reg. 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property of structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of the real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefit.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the trans-

feree and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

Reg. 104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

Reg. 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Reg. 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applications, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Reg. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

Reg. 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Regs. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Reg. 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

Reg. 104.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subject to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from lay off and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

Reg. 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Reg. 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Reg. 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Reg. 104.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Reg. 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped. *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

Reg. 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Reg. 104.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Reg. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice*. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

Reg. 104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration*. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards*. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971))[1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evidence that equivalent access to the facility is thereby provided. Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1978. Incorporated documents are on file at the Office of the Federal Register.

[1] Copies of the standards are obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980]

Subpart D—Preschool, Elementary, And Secondary Education

Reg. 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

Reg. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardian of the recipient's duty under this subpart.

Reg. 104.33 Free appropriate public education.

(a) *General*. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Regs. 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General*. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and Reg. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Reg. 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Reg. 104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Reg. 104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievements tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Reg. 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

Reg. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Reg. 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Reg. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Reg. 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Reg. 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Reg. 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Regs. 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Regs. 104.34, 104.37, and 104.38.

Subpart E—Postsecondary Education

Reg. 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Reg. 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a

predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.

(3) Shall assure itself that (i) admission tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Reg. 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Reg. 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped. *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Reg. 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

Reg. 104.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of the degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Reg. 104.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Reg. 104.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not, (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

Reg. 104.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of Reg. 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health, Welfare, And Social Services

Reg. 104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Reg. 104.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in Reg. 104.4(b) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provisions of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

Reg. 104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Reg. 104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in Reg. 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in Reg. 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

Subpart G—Procedures

Reg. 104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in Regs. 100.6-100.10 and Part 101 of this Title.

CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

(34 Code of Federal Regulations Part 200)

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(Authority: 20 U.S.C. 2701-2731, 2821-2838, 2851-2854, 2891-2901, unless otherwise noted.)
[Source: 47 FR 52343, Nov. 19, 1982, revised by 54 FR 21756, May 19, 1989, unless otherwise noted.]

Subpart A—General

Reg. 200.1 What is the Chapter 1 Program in Local Educational Agencies?

(a) Under the Chapter 1 Program in Local Educational Agencies (LEAs)—referred to in this part as the Chapter 1 LEA Program—the Secretary provides Federal financial assistance for projects designed to meet the special educational needs of—

(1) Educationally deprived children in LEAs;

(2) Children in local institutions for neglected or delinquent children, including children in local correctional institutions; and

(3) Educationally deprived Indian children under section 1005(d) of the Act.

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(b)(1) The purpose of assistance under this part is to improve the educational opportunities of educationally deprived children by helping these children—

(i) Succeed in the regular program of the LEA;

(ii) Attain grade-level proficiency; and

(iii) Improve achievement in basic and more advanced skills.

(2) The purpose is accomplished through means such as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education.

(Authority: 20 U.S.C. 2701)

Reg. 200.2 Who is eligible for a grant?

The Secretary provides funds under the Chapter 1 LEA Program to—

(a) States, through their respective State educational agencies (SEAs); and

(b) The Secretary of the Interior for Indian children referred to in Reg. 200.1(a)(3).

(Authority: 20 U.S.C. 2711-2712)

Reg. 200.3 Who is eligible for a subgrant?

(a) *General rule.*

(1) Except as provided in paragraph (d) of this section, an LEA that qualifies under paragraph (b) or (c) of this section is eligible for a subgrant under the chapter 1 LEA Program.

(2) An SEA provides two types of subgrants—basic grants and concentration grants—to qualifying LEAs.

(b) *Basic grants.* An LEA is eligible for a basic grant if—

(1) There are at least 10 children counted under section 1005(c) of the Act in the school district of the LEA; or

(2) Satisfactory data on a school district basis are not available but the school district served by the LEA is located, in whole or in part, in a county in which there are at least 10 children counted under section 1005(c) of the Act.

(c) *Concentration grants.*

(1) An LEA is eligible for a concentration grant if—

(i) The LEA is eligible for a basic grant under paragraph (b) of this section;

(ii) The school district of the LEA is located, in whole or in part, in a county in which the number of children counted under section 1005(c) of the Act in the school districts of LEAs in the county in the preceding fiscal year exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive, in the school districts of LEAs in the county in the preceding fiscal year; and

(iii) The number of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the preceding fiscal year in the school district of the LEA exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive, in the school district of the school district of the LEA in the preceding fiscal year.

(2) An LEA that does not qualify for a concentration grant under paragraph (c)(1) of this section may receive a concentration grant under Reg. 200.25(b).

(d) *Exception.* This section does not apply to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Secretary of the Interior.

(Authority: 20 U.S.C. 2711-2712)

Reg. 200.4 What kind of activities may an LEA conduct?

(a) Under the Chapter 1 LEA Program, an LEA may conduct only projects that are designed to provide supplemental services to meet the special educational needs of educationally deprivied children at the preschool, elementary, and secondary school levels.

(b) An LEA is encouraged to—

(1) Develop programs to assist participating children to improve achievement in basic and more advanced skills; and

(2) Consider year-round services and activities, including intensive summer school programs.

(c) Authorized activities to meet the special educational needs of educationally deprived children include—

(1) Acquisition of equipment and instructional materials;

(2) Acquisition of books and school library resources;

(3) Employment of special instructional personnel, school counselors, and other pupil services personnel;

(4) Employment and training of education aides;

(5) Payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas;

(6) Training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early children education professionals;

(7) Construction, if necessary, of school facilities;

(8) Parental involvement activities;

(9) Planning for and evaluation of Chapter 1 projects; and

(10) Other allowable activities.

(d)(1) With the approval of the SEA, an LEA may use up to and including five percent of the funds the LEA receives under Regs. 200.22 through 200.26 for innovation projects to promote quality in the Chapter 1 LEA Program.

(2) Innovation projects may include only the following:

(i) Notwithstanding Reg. 200.31(a), the continuation of services to children who received Chapter 1 services in any preceding year for a period sufficient to maintain progress made during the period of their participation in the program.

(ii) Notwithstanding Reg. 200.31(c)(1), the provision of continued services, for a period not to exceed two additional years, to children participating in a Chapter 1 project who are transferred to ineligible areas or schools as part of a desegregation plan.

(iii) Incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this part.

(iv) Training of teachers paid with funds under this part and teachers and librarians paid with other funds with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs.

(v) Programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs.

(vi) Encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children.

(vii) Assistance by LEAs of schools identified under Reg. 200.38(b).

(3) Except as provided in paragraph (d)(2)(i)-(ii) of this section, the requirements of this part apply to innovation projects conducted under this section.

(Authority: 20 U.S.C. 2721)

Reg. 200.5 What regulations apply to the Chapter 1 LEA Program?

The following regulations apply to the Chapter 1 LEA Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General), except for Reg. 76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.580-76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(b) The regulations in this Part 200.

(Authority: 20 U.S.C. 2831(a))

Reg. 200.6 What definitions apply to the Chapter 1 LEA program?

(a) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in section 1471 of the Act:

Average daily attendance
Construction
County
Effective schools programs
Elementary school
Equipment
Free public education
Local educational agency (LEA)
More advanced skills
Parent advisory council
Project area
Pupil services
Pupil services personnel
School facilities
Secondary school
Secretary
State
State educational agency (SEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Application
Department
EDGAR
GEPA
Grant
Minor remodeling
Personal property
Private
Project
Public
Real property
Subgrant
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

"Aggregate performance" means educational achievement of children participating in programs under this part, aggregated for a school as a whole, measured in accordance with the national evaluation standards in Subpart H.

"Chapter 1" means Chapter 1 of Title 1 of the Act.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education through grade 12; or

(2) Who are of preschool age.

"Desired outcomes"—

(1) Means an LEA's goals to improve the educational opportunities of educationally deprived children to help those children—

(i) Succeed in the regular educational program of the LEA;

(ii) Attain grade-level proficiency; and

(iii) Improve achievements in basic and more advanced skills;

(2) At a minimum, must be expressed in terms of aggregate performance in accordance with Reg. 200.38(b)(1)(ii).

(3) May also be expressed in terms of other indicators such as—

(i) Improved student performance measured by criterion-referenced tests;

(ii) Lower dropout rates;

(iii) Improved attendance; and

(iv) Fewer retentions in grades.

"ECIA" means the Education Consolidation and Improvement Act of 1981.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated primarily for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Parent." (1) The term includes a legal guardian or other person standing in loco parentis.

(2) "In loco parentis" means a person acting in place of a parent or legal guardian, and may include a person such as grandparent, stepparent, aunt, uncle, older sibling, or other person either—

(i) With whom a child lives; or

(ii) Who has been designated by a parent or legal guardian to act in place of the parent or legal guardian regarding all aspects of the child's education.

"Preschool children" means children who are—

(1) Below the age or grade level at which the LEA provides a free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or other educational setting.

"School attendance area." (1) This term means, in relation to a particular public school, the geographic area in which the children who are normally served by that school reside.

(2) If a child's school attendance area cannot be determined on a geographic basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Authority: 20 U.S.C. 2831(a), 2891)

Regs. 200.7-200.9 [Reserved]

Subpart B—How Does A State Apply For And Receive A Grant?

Reg. 200.10 What assurances must a State submit to receive a grant?

(a) A State that wishes to receive funds under this part for projects designed to meet the special educational needs of educationally deprived children shall submit to the Secretary, through its SEA, assurances that the SEA—

(1) Will meet the requirements in section 435(b)(2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures;

(2) Will carry out the activities in Reg. 200.35 (evaluation) and Regs. 200.37-200.38 (school program improvement);

(3) Has on file a program improvement plan that meets the requirements of Reg. 200.37(a); and

(4) Will ensure that its LEAs comply with all applicable statutory and regulatory requirements.

(b) The assurances submitted under paragraph (a) of this section remain in effect for the duration of the SEA's participation in the Chapter 1 LEA Program.

(Authority: 20 U.S.C. 2722(a))

Regs. 200.11- 200.19 [Reserved]

Subpart C—How Does An LEA Apply For And Receive A Subgrant?

Reg. 200.20 How does an LEA apply for a subgrant?

(a) *Contents of an application.* An LEA may receive a subgrant under this part for any fiscal year if the LEA has on file with the SEA an application that contains the following:

(1) A description of the procedures to be used to conduct an annual assessment of educational needs that meets the requirements of Reg. 200.31(b).

(2) A rank ordering of eligible school attendance areas, including the identification of project areas and the basis for the selection of each project area.

(3) A description of the Chapter 1 project to be conducted, including a budget of proposed expenditures for services to public and private school children for the initial project year.

(4) A description of—

(i) The desired outcomes for children participating in the Chapter 1 project, in terms of basic and more advanced skills that all children are expected to master, that will be a basis for evaluating the project under Reg. 200.35; and

(ii) How the LEA will measure substantial progress toward meeting the desired outcomes.

(5) A description of the services to be provided to—

(i) Eligible children enrolled in private elementary and secondary schools to ensure equitable participation of those children in accordance with Regs. 200.50-200.55; and

(ii) Children in local institutions for neglected or delinquent children, including children in local correctional institutions.

(6) A description of any innovation projects the LEA proposes to conduct.

(7) Data showing that the LEA has maintained fiscal effort in accordance with Reg. 200.41 if those data are not otherwise available to the SEA.

(8) If appropriate, the assurance concerning comparability of services in Reg. 200.43(c)(1)(i).

(9) The assurances required under section 436(b)(2) and (3) of GEPA relating to fiscal control and fund accounting procedures.

(10)(i) Assurances that the LEA's Chapter 1 projects—

(A) Are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served;

(B) Are designed and implemented in consultation with teachers (including early childhood professionals, pupil services personnel, and librarians, if appropriate);

(C) Provide for parental involvement in accordance with Reg. 200.34;

(D) Provide for the allocation of time and resources for frequent and regular coordination between Chapter 1 staff and the regular staff to ensure that both the Chapter 1 and regular instructional programs meet the special educational needs of children participating in programs under this part; and

(E) Provide maximum coordination between Chapter 1 services and services provided to address children's handicapping conditions or limited English proficiency; and

(ii) With the least possible paperwork and burden, additional information an SEA finds necessary to ensure compliance with these assurances.

(b) *Development and approval of application.* An application must be

(1) Developed in consultation with parents and teachers; and

(2) Approved by the SEA under Reg. 200.21.

(c) *Frequency of submission.*

(1) An LEA shall submit to the SEA an application prior to each project period.

(2) A project period may cover a period of not more than three years.

(d) *Annual updating of information in the application.* An LEA shall annually update its application by submitting to the SEA—

(1) Information on eligible school attendance areas and the selection of project areas required in paragraph (a)(2) of this section;

(2) Data showing that the LEA has maintained fiscal effort in accordance with Reg. 200.41 if those data are not otherwise available to the SEA; and

(3) A budget of proposed expenditures for services to public and private school children under this part for the project year.

(e) *Further updating of information in the application.* If there are substantial changes in the number or needs of the children to be served or the services to be provided, an LEA shall submit a description of the changes to the SEA.

(Authority: 20 U.S.C. 2721(b), 2722(b)-(c), 2723, 2728(a), (c), 2838(c))
[54 FR 27793, June 30, 1989]

Reg. 200.21 Under what conditions does an SEA approve an LEA's application?

(a) *Standards for approval.* An SEA shall approve an LEA's application for a subgrant if—

(1) The application meets the requirements in Reg. 200.20; and

(2) The SEA determines that the LEA—

(i) Maintained fiscal effort in accordance with Reg. 200.41; or

(ii) Has modified its application to take into account its reduced allocation if the LEA failed to maintain effort.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Authority: 20 U.S.C. 2722, 2728(a))

ALLOCATION OF BASIC GRANTS

Reg. 200.22 How does an SEA allocate funds for basic grants to an LEA?

(a) If the Secretary determines the amount of funds that each LEA in a State is eligible to receive under section 1005(a)(2)(A) of the Act, an SEA shall allocate that amount to each LEA within the State.

(b) If the Secretary determines county aggregate amounts under section 1005(a)(2)(B) of the Act, the SEA shall allocate those county aggregate amounts to LEAs in accordance with Regs. 200.23-200.24.

(Authority: 20 U.S.C. 2711(a))
[54 FR 27793, June 30, 1989]

Reg. 200.23 How does an SEA allocate county aggregate amounts?

Except as provided in Reg. 200.24, an SEA shall allocate county aggregate amounts to LEAs as follows:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1)(i) Except as provided in paragraphs (a)(2), (3), and (4) of this section the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based on the total number of children aged 5 to 17, inclusive, in the LEA's school district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part D of Chapter 1 (programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(ii) For the purpose of this section, the SEA shall consider children who are in local correctional institutions to be residing in institutions for delinquent children.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on those children, including any concentration grant funds generated by those children; and

(ii) Assign that portion of the LEA's allocation to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State agency or LEA that agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate to any other LEA that portion of the LEA's allocation that is based on those children.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect the transfer.

(b) *Allocations based on the distribution of children from low-income families*—(1) *General rule.* (i) After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(ii) The SEA shall determine the number of children from low-income families in the school districts of the LEAs in the county by using the same measures of low-income throughout the State.

(iii) In accordance with section 1403(a) of the Act, an LEA's allocation under paragraphs (a) and (b)(1)(i) of this section may not be less than 85 percent of the allocation it received for the previous fiscal year.

(2) *Special circumstances.* The SEA shall adjust the allocations it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the school district of the LEA is located provided the aggregate number of children from low-income families in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children within the same geographic area as another LEA, the SEA may adjust the allocations between the LEAs in a manner the SEA determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations for the affected LEAs to reflect the number of children from low-income families for whom each LEA is providing a free public education; or

(B) Permit an LEA that has submitted an approved application to carry out the project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of funds under this part generated by fewer than 10 children.

(Authority: 20 U.S.C. 2711, 2822-2823)
[54 FR 27793, June 30, 1989]

Reg. 200.24 Are there exceptions to how an SEA allocates county aggregate amounts?

(a) In any State in which a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority to make allocations directly to LEAs without regard to counties.

(b) If an SEA allocates directly to LEAs under paragraph (a) of this section, the SEA shall use the same factors contained in section 1005(c) of the Act to determine the LEAs' allocations as the Secretary used to compute county aggregate amounts under section 1005(a)(2)(B) of the Act.

(c) An LEA dissatisfied with the determination by the SEA under this section may appeal directly to the Secretary for a final determination.

(Authority: 20 U.S.C. 2711)

ALLOCATION OF CONCENTRATION GRANTS

Reg. 200.25 How does an SEA allocate concentration grants to an LEA?

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs—

(i) Whose school districts lie, in whole or in part, within the county; and

(ii) That meet the eligibility criteria in Reg. 200.3(c)(1).

(2) In allocating concentration grant funds under paragraph (a) of this section, the SEA shall distribute the funds to each LEA that is eligible to receive those funds in proportion to the current number of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the school district of each LEA compared to the current number of those children in the school districts of all LEAs that are eligible for concentration grants in the county.

(b) *Exceptions.* (1)(i) An SEA may reserve not more than 2 percent of the amount of concentration grant funds it receives to make direct payments to LEAs that meet the criteria in Reg. 200.3(c)(1)(i) and (iii) but are located in counties that are not eligible under Reg. 200.3(c)(1)(ii).

(ii) If an SEA plans to reserve concentration grant funds under paragraph (b)(1)(i) of this section, the SEA, before allocating any concentration grant funds under paragraph (a) or (b)(2)-(3) of this section, shall—

(A) Determine which LEAs located in ineligible counties are eligible to receive concentration grant funds;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount;

(D) Rank order the LEAs eligible for concentration grant funds that are located in ineligible counties according to the number or percentage of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the preceding fiscal year in each LEA;

(E) Select, in rank order, those LEAs that the SEA plans to provide concentration grant funds; and

(F) Distribute the reserved funds among the selected LEAs in proportion to the current number of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the school district of each LEA compared to the current number of those children in all school districts of the selected LEAs.

(2) In a county in which no LEA meets the eligibility criteria in Reg. 200.3(c)(1)(iii), an SEA shall—

(i) Identify those LEAs in which either the number or percentage of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the preceding fiscal year exceeds the average number or percentage of those children in the county; and

(ii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (b)(2)(i) of this section in proportion to the current number of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of those LEAs.

(3) In a State that receives a minimum concentration grant under section 1006(a)(1)(B) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State in accordance with the provisions in paragraph (a) and (b) of this section; or

(ii) Without regard to the counties in which the LEAs are located—

(A) Identify those LEAs in which either the number or percentage of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the preceding fiscal year exceeds the average number or percentage of those children in the State; and

(B) Allocate concentration grant funds among the LEAs identified in paragraph (b)(3)(ii)(A) of this section in proportion to the current number of children counted for purposes of Reg. 200.23 or Reg. 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of all LEAs so identified.

(c) *Use of concentration grant funds.* (1) An LEA that receives concentration grant funds under this section shall use those funds to carry out activities described in its approved project application under Reg. 200.20.

(2) The LEA is not required to account for concentration grant funds separately from basic grant funds.

(Authority: 20 U.S.C. 2712)
[54 FR 27793, June 30, 1989]

REALLOCATION

Reg. 200.26 How does an SEA reallocate funds?

(a) An SEA shall reallocate, on a timely basis, excess Chapter 1 funds provided under Regs. 200.22-200.25—

(1) From an LEA that—

(i) Is not participating in the Chapter 1 LEA Program;

(ii) Has had its allocation reduced because it failed to meet the maintenance of effort requirements in Reg. 200.41;

(iii) Has carryover funds that exceed the percentage limitation in Reg. 200.46; or

(iv) Has excess funds for other reasons; or

(2) That the SEA has recovered after determining that an LEA has failed to spend funds received under this part in accordance with applicable law.

(b)(1) An SEA may reallocate excess Chapter 1 funds referred to in paragraph (a) of this section only to LEAs with the greatest need for those funds because of inequities in, or mitigating hardships caused by, application of the allocation formula in section 1005 of the Act.

(2) Factors that may cause inequities in the formula include—

(i) An increase since the most recent decennial census, caused by population shifts or changing economic conditions, in the number of children from low-income families.

(ii) Caseload data used in the allocation formula that are not representative of the number of neglected or delinquent children in local institutions; and

(iii) Other circumstances in which the statutory formula fails to reflect accurately the number or percentage of low-income children.

(c) The SEA shall develop procedures for reallocating excess Chapter 1 funds provided under Regs. 200.22-200.25 that include the following three steps:

(1) A determination of which LEAs are eligible to receive additional funds as indicated by the presence of factors such as those in paragraph (b)(2) of this section. An LEA's eligibility must be based on inequity caused by the allocation formula.

(2) From among the eligible LEAs, a determination of which LEAs have the greatest need for funds. The SEA may consider such factors as—

(i) The degree of increase in the number or percentage of children from low-income families; and

(ii) An LEA's need for additional funds to provide Chapter 1 services to address the unmet needs of eligible Chapter 1 children.

(3) An establishment of timelines for reallocation.

(d)(1) An SEA may reallocate excess funds only during the Federal fiscal year for which the funds were appropriated or during the succeeding Federal fiscal year.

(2) Reallocation does not extend the period during which the excess funds are available for obligation.

(Authority: 20 U.S.C. 1225(b), 2823(b), 2832(b))

Regs. 200.27- 200.29 [Reserved]

Subpart D—What Project Requirements Apply To The Chapter 1 LEA Program?

Reg. 200.30 How does an LEA select school attendance areas to be project areas?

(a) *General rule.* (1) Except as provided in paragraphs (b) and (d) of this section, an LEA that receives Chapter 1 funds under this part shall conduct Chapter 1 projects in school attendance areas that have high concentrations of children from low-income families.

(2)(i) An LEA shall identify a school attendance area with a high concentration of children from low-income families as an eligible school attendance area if—

(A) The percentage of children from low-income families in that school attendance area is at least as high as the percentage of children from low-income families in the LEA as a whole; or

(B) The number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(ii) In identifying eligible areas, the LEA may use a combination of the methods in paragraph (a)(2)(i) of this section, except that the total number of eligible school attendance areas may not exceed the number the LEA would have identified as eligible if it had used only one of the methods.

(iii) If an LEA ranks its school attendance areas by grade span groupings under paragraph (a)(3)(i)(A) of this section, the LEA shall determine the percentage or average number of children from low-income families in the LEA as a whole for each grade span grouping.

(3) If funds available under this part are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, an LEA shall—

(i) Annually rank its eligible school attendance areas from highest to lowest according to relative degree of concentration of children from low-income families. The LEA may rank its school attendance areas—

(A) By grade span groupings; or

(B) For the entire LEA; and

(ii) Based on the needs of educationally deprived children identified under Reg. 200.31(b) and the resources necessary to meet those needs, determine in rank order the number of eligible school attendance areas to be served.

(4) An LEA may carry out a Chapter 1 program or project in an eligible school attendance area only if it carries out a Chapter 1 program or project in all other eligible school attendance areas that are ranked higher under paragraph (a)(3) of this section.

(b) *Special rules.* Notwithstanding paragraph (a) of this section, an LEA may identify and rank eligible school attendance areas as follows:

(1) An LEA may designate as eligible and serve all school attendance areas within a grade span grouping or in the entire LEA if the percentage of children from low-income

families in each school attendance area is not more than five percentage points above or five percentage points below the average percentage of children from low-income families within a grade span grouping or within the entire LEA.

(2)(i) If the expenditure requirements in paragraph (b)(2)(ii) of this section are met, an LEA may designate as eligible any school attendance areas in which at least 25 percent of the children are from low-income families.

(ii)(A) Except as provided in paragraph (b)(2)(ii)(B) of this section, an LEA may use the provision in paragraph (b)(2)(i) of this section only if, in each school attendance area of the LEA in which Chapter 1 projects were carried out during the preceding year, the aggregate per pupil expenditures of funds available under this part and funds from a State program that meets the requirements of section 1018(d)(1)(B) of the Act in the current fiscal year equal or exceed the aggregate per pupil expenditures from those sources in the preceding fiscal year, provided that each school attendance area qualifies for the amount under the requirements in Reg. 200.33.

(B) An LEA may expend in the current fiscal year in particular school attendance areas less than the aggregate per pupil amount required under paragraph (b)(2)(ii)(A) of this section if the LEA determines under Reg. 200.33 that fewer resources are needed to meet the needs of children selected for participation in those attendance areas.

(3)(i) An LEA may designate a school that serves an ineligible school attendance area or serves more than one school attendance area as an eligible school if the proportion of children from low-income families in average daily attendance in that school is substantially equal to the proportion of children from low-income families in an eligible school attendance area.

(ii) If an LEA designates a school as eligible under paragraph (b)(3)(i) of this section, the LEA shall—

(A) Determine that the school complies with the school attendance area requirements in paragraph (a) of this section; and

(B) At its discretion, apply the special rules for identifying and ranking eligible school attendance areas in paragraph (b) of this section to the school.

(4) With the approval of the SEA, an LEA may designate as eligible and serve a school attendance area with a substantially higher number or percentage of educationally deprived children before school attendance areas with higher concentrations of children from low-income families if—

(i) The LEA does not serve more school attendance areas than could otherwise be served; and

(ii) The SEA determines that the selection of school attendance areas under paragraph (b)(4) of this section will not substantially impair the delivery of services to educationally deprived children from low-income families in project areas served by the LEA.

(5)(i) An LEA may continue to provide for one year Chapter 1 services in a school attendance area that is not eligible or is eligible but not selected under paragraph (a) of this section if that school attendance area was eligible and selected under the standards in paragraph (a) of this section in the immediately preceding year.

(ii) A school attendance area that continues to be served under paragraph (b)(5)(i) of this section may take the place of the lowest ranked but otherwise eligible school attendance area.

(6) With the approval of the SEA, an LEA map skip eligible school attendance areas that have higher proportions or number of children from low-income families if the children in those attendance areas are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private elementary and secondary schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the requirements in paragraphs (a) and (b)(1)-(5) of this section.

(c) For purposes of paragraphs (a) and (b) of this section, an LEA, on the basis of the best available data on children from low-income families, shall annually select and use the same measure of low income—which may be a composite of several indicators—to identify and rank eligible school attendance areas within a grade span grouping or for the entire LEA.

(d) *Exemptions.* An LEA does not have to comply with the requirements in this section but shall comply with the requirements in Reg. 200.31 if the LEA has—

(1) A total enrollment of fewer than 1,000 children; or

(2) No more than one school attendance area at each grade span.

(Authority: 20 U.S.C. 2723(a)-(b))
[54 FR 27793, June 30, 1989]

Reg. 200.31 How does an LEA identify and select children to participate?

(a) *General rule.* Except as provided in paragraph (c) of this section and Reg. 200.36, an LEA shall use funds available under this part only for educationally deprived children, identified under paragraph (b) of this section as having the greatest need for special assistance, in school attendance areas or schools selected under Reg. 200.30.

(b) *Annual assessment of educational needs.* An LEA that receives funds under this part shall annually assess educational needs under this part as follows:

(1) Identify educationally deprived children, as defined in Reg. 200.6(c), in all eligible school attendance areas, including educationally deprived children in private schools.

(2) On the basis of information obtained under paragraph (b)(1) of this section, including information concerning educationally deprived children in private schools, identify the general instructional areas and grade levels on which the program will focus. Instructional areas and grade levels may vary

among and within school attendance areas if the needs assessment data support those variations.

(3) Establish educationally related objective criteria, which include written or oral testing instruments, for each grade level and instructional area to select educationally deprived children for participation in the Chapter 1 project.

(4) Uniformly apply the criteria required in paragraph (b)(3) of this section to particular grade levels throughout the LEA.

(5) Select for services those educationally deprived children who have the greatest need for special assistance.

(6) Determine—

(i) The special educational needs of participating children with sufficient specificity to ensure concentration on those needs; and

(ii) The resources such as personnel, instructional materials, and library resources necessary to meet those special educational needs.

(c) *Special rules.* In selecting children to participate in Chapter 1, an LEA may implement the following provisions:

(1) An LEA may use funds available under this part during the current school year to continue to service educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this part.

(2) An LEA may skip educationally deprived children in greatest need of special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(3) An LEA may use funds available under this part to serve, for a maximum of two additional years, children who were identified in the previous year as being in greatest need for special assistance and who continue to be educationally deprived but are no longer in greatest need of special assistance.

(4) An LEA shall consider as eligible and may serve children who, at any time in the previous two years, received services under the Chapter 1 Program for Neglected or Delinquent Children.

(5)(i) An LEA may identify as eligible and serve under this part children receiving services to overcome handicapping conditions or limited English proficiency if these children—

(A) Have needs stemming from educational deprivation and not needs related solely to their handicapping conditions or limited English proficiency; and

(B) Are selected on the same basis as other children identified as eligible for and selected to receive services under paragraph (b) of this section.

(ii) In identifying and selecting limited English proficient children for participation in the Chapter 1 LEA Program, an LEA shall—

(A) For children with sufficient English language proficiency, use tests written in the English language, with or without bilingual assistance; or

(B) For children whose lack of English language proficiency precludes valid assessment in the English language, use factors such as teacher evaluation of student performance, language dominance tests in combination with other measures, or other indicators that may be used separately, as a composite score, or as a composite with weighting, to select children on a basis other than English language deficiency.

(iii) An LEA may not use funds available under this part to provide services that are required by Federal, State, or local law to overcome children's handicapping conditions or limited English proficiency.

(Authority: 20 U.S.C. 2724)

Reg. 200.32 What are the size, scope, and quality requirements of a project?

LEA shall use funds available under this part for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Authority: 20 U.S.C. 2722(c)(1))

Reg. 200.33 How does an LEA allocate resources to project areas and schools?

(a) Except as provided in paragraph (b) of this section, an LEA shall allocate resources available under this part among project areas and schools on the basis of—

(1) The number and needs of children selected for participation under Reg. 200.31;

(2) The degree of educational deprivation of these children; and

(3) The services to be provided.

(b) For the sole purpose of allocating resources available under this part among project areas and schools under paragraph (a) of this section, an LEA may continue to count, for two additional years, children in those areas and schools who—

(1) Received Chapter 1 services in the preceding school year; but

(2) Are no longer eligible for services because of improved academic achievement attributable to the Chapter 1 services.

(Authority: 20 U.S.C. 2723(c))

Reg. 200.34 How does an LEA involve parents?

(a) *General rule.* (1) An LEA may receive funds under this part only if it implements programs, activities, and procedures for the involvement of parents of participating public and private school children. This involvement must include, but is not limited to, parent input into the planning, design, and implementation of the Chapter 1 LEA Program.

(2)(i) The activities and procedures required under paragraph (a)(1) of this section must be planned and implemented with the meaningful consultation of parents of participating children.

(ii) The consultation required in paragraph (a)(2)(i) of this section and in other sections in this part must be organized, systematic, ongoing, informed, and timely in relation to decisions about the program.

(3) The activities and procedures for the involvement of parents must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under paragraph (b) of this section.

(b) *Goals of parental involvement.* To meet the requirements in paragraph (a) of this section, an LEA shall, in coordination with parents of participating children, develop programs, activities, and procedures that have the following goals:

(1) To inform parents of participating children of the—

(i) Reasons their children are participating in the program; and

(ii) Specific instructional objectives and methods of the program.

(2) To support the efforts of parents, including training parents, to the maximum extent practicable, to—

(i) Work with their children in the home to attain the instructional objectives of the program; and

(ii) Understand the program requirements.

(3) To train parents, teachers, and principals to build a partnership between home and school.

(4) To train teachers, principals, and other staff members involved in the Chapter 1 LEA Program to work effectively with the parents of participating children.

(5) To consult with parents, on an ongoing basis, concerning the manner in which the school and parents can work better together to achieve the program's objectives.

(6) To provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, alalowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives.

(7) To ensure opportunities, to the extent practicable, for the full participation of parents who lack literacy skills or whose native language is not English.

(c) *Specific requirements.* An LEA shall implement the following activities:

(1)(i) Develop written policies, after consultation with and review by parents, to ensure that parents are involved in the planning, design, and implementation of the Chapter 1 LEA Program. The written policies must provide for timely response to recommendations by parents.

(ii) Make the policies available to parents of participating children.

(2) Convene an annual meeting, to which all parents of participating children must be invited, to explain the programs and activities provided with funds available under this part. The annual meeting may be districtwide or at the building level so long as all parents of participating children are provided the opportunity to attend.

(3)(i) Provide parents of participating children with reports on their children's progress.

(ii) To the extent practical, conduct a parent-teacher conference with the parents of each participating child to discuss the child's progress, placement, and methods the parents can use to complement the child's instruction.

(iii) Make educational personnel under the Chapter 1 LEA Program, including pupil services personnel, readily accessible to parents.

(iv) Permit parents of participating children to observe Chapter 1 LEA Program activities.

(4) Provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire.

(5) Provide parents of participating children with timely information about the program.

(6) Make parents aware of parental involvement requirements and other relevant provisions of the program.

(7) Provide reasonable support for parental involvement activities as parents may request.

(8) Coordinate, to the extent possible, parental involvement activities with programs funded under the Adult Education Act.

(9) To the extent practicable, provide information, programs, and activities for parents under this section in a language and form that the parents understand.

(d) *Assessment of the parental involvement program.* An LEA shall annually assess, through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

(e) *Allowable activities and costs.* Chapter 1 activities that an LEA may support with funds available under this part to meet the requirements of this section include the following:

(1) Regular parent conferences.

(2) Parent resource centers.

(3) Parent training programs, including reasonable and necessary expenditures associated with parents' attendance at training sessions.

(4) Hiring, training, and utilization of parent involvement liaison workers.

(5) Reporting to parents on children's progress.

(6) Training and support of personnel, including pupil services personnel, to work with parents, coordinate parent activities, and make home contacts.

(7) Use of parents as classroom volunteers, tutors, and aides.

(8) Provision of school-to-home complementary curriculum and materials.

(9) Provision of assistance in implementing home-based education activities that reinforce classroom instruction and student motivation.

(10) Provision of timely information on the Chapter 1 LEA Program, including program plans and evaluations.

(11) Solicitation of parents' suggestions in the planning, development, and operation of the program.

(12) Provision of timely responses to parent recommendations.

(13) Parent advisory councils.

(14) Other activities designed to enlist the support and participation of parents in the instruction of their children.

(Authority: 20 U.S.C. 2726, 2731(a)(4))

Reg. 200.35 What are the requirements for evaluating and reporting project results?

(a) *LEA evaluations.* (1)(i) An LEA shall evaluate, at least once every three years, the effectiveness of its Chapter 1 projects, in terms of basic and more advanced skills that all children are expected to master, on the basis of—

(A) The desired outcomes described in the LEA's application; and

(B) Except for Chapter 1 children in preschool, kindergarten, and first grade, student achievement, aggregated for the LEA as a whole, in accordance with the national standards in Subpart H.

(ii) In accordance with Reg. 200.1(b)(1) (statement of purpose) and Reg. 200.20(a)(10)(i)(D) (coordination with the regular program), the LEA shall include in its evaluation a review of Chapter 1 participating children's progress in the regular program of the LEA. This review may be based on teacher judgments, grades, retention rates, and other appropriate indicators of success.

(2)(i) The LEA shall determine whether improved performance of Chapter 1 participating children is sustained over a period of more than 12 months.

(ii) To make this determination, an LEA shall assess performance of the same children for at least two consecutive 12-month periods, provided these children continue to be enrolled in schools of the LEA.

Example: An LEA provides Chapter 1 services during the 1989-90 school year. The LEA measures the gains made by participating children on a spring-spring testing cycle (spring of 1989, 1990). To determine whether improved performance is sustained over a period of more than 12 months, the LEA measures performance again in the spring of 1991.

(3) The LEA shall report its evaluation results to the SEA at least once during each three-year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter 1 programs in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107, 1202(a)(6), and 1242(d) of the Act.

(2) The SEA shall inform its LEAs, in advance, of the specific data that will be needed and how the data may be collected.

(3) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(c) *Annual performance report.* (1) An SEA shall annually—

(i) Collect data specified in section 1019 of the Act and by the Secretary in the SEA's annual performance report; and

(ii) Submit those data to the Secretary.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual performance report.

(Authority: 20 U.S.C. 1221e-1a, 2701(b), 2722(b), (c)(3), 2729, 2835, 2852)
[54 FR 27793, June 30, 1989]

Reg. 200.36 What are the requirements for schoolwide projects?

(a) *Eligibility for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if the following requirements are met:

(1) The school serves an eligible attendance area or is an eligible school in accordance with Reg. 200.30.

(2) For the first year of the three-year project period the LEA determines, using the same measure of low income used to identify and rank school attendance areas under Reg. 200.30(c), that at least 75 percent of the children residing in the school attendance area or enrolled in the school are from low-income families.

(3) The LEA develops a plan for the school that—

(i) Meets the requirements in paragraph (b) of this section; and

(ii) Has been approved by the SEA.

(4) The LEA meets the fiscal requirements in paragraph (c) of this section.

(b) *Required plan.* The plan required under paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Establish goals to—

(i) Meet the special needs of all students; and

(ii) Ensure that educationally deprived children are—

(A) Served effectively; and

(B) Demonstrate performance gains that are comparable to the performance gains of other students;

(3) Describe the instructional program, pupil services, and procedures to be used to implement the goals of the schoolwide project;

(4) Describe the specific uses of funds available under this part in the schoolwide project;

(5) If appropriate, describe how the school will move to implement an effective schools program as defined in section 1471 of the Act;

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(6) Be developed with the involvement of individuals who will be engaged in carrying out the plan, including—

(i) Parents;

(ii) Teachers;

(iii) Librarians;

(iv) Education aides;

(v) Pupil services personnel;

(vi) Administrators; and

(vii) If the plan relates to a secondary school, students;

(7) Provide for consultation among the individuals listed in paragraph (b)(6) of this section concerning the—

(i) Educational progress of all students in the school; and

(ii) Development and implementation of the accountability measures required in paragraph (f) of this section;

(8) Provide for appropriate training of parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable these individuals to carry out the plan; and

(9) Include procedures for measuring progress under paragraph (f) of this section and a description of the measures to be used.

(c) *Fiscal requirements.* An LEA that uses funds available under this part to conduct a schoolwide project shall meet the following fiscal requirements:

(1)(i) In an LEA with one or more schoolwide projects and one or more other schools serving project areas, the LEA shall provide for each schoolwide project an amount of funds made available under this part that, for each educationally deprived child, equals or exceeds the amount of funds made available under this part that the LEA provides for each educationally deprived child served in other project schools. In determining the number of educationally deprived children in a schoolwide project, the LEA shall use either of the following:

(A) The number of children in the schoolwide project below the highest ranked child served in other project schools in the LEA.

(B) All children meeting the definition of "educationally deprived children" in Reg. 200.6(c).

(ii) The LEA shall allocate to a schoolwide project an amount of funds made available under this part that is sufficient to ensure that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the educationally deprived children served.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, during each fiscal year in which a schoolwide project is carried out, the LEA shall, in each schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a compensatory program as defined in Reg. 200.45(a)(1) and special supplementary State and local funds required under Chapter 1 of the ECIA for each child in a schoolwide project who was not educationally deprived—that is at least equal to the amount of State and local funds the LEA spent per child in that school during the preceding fiscal year.

(ii) The LEA shall include for each fiscal year the cost of services for State and local programs under Reg. 200.45(a)(2) only in proportion to the number of children served by these programs in the school in the year for which the determinations are made.

(3) The LEA shall ensure that funds made available under this part for a schoolwide project only supplement, and to the extent practical, increase the level of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school.

(4) The LEA shall comply with the comparability requirements in Reg. 200.43.

(5) Notwithstanding paragraph (d)(2) of this section, the LEA shall keep records to document the expenditure of funds made available under this part in a schoolwide project.

(d) *Effect of selection for a schoolwide project.* (1) The SEA shall approve the plan of the LEA for a schoolwide project for a period of three years if the plan meets the requirements in paragraphs (b) and (c) of this section.

(2) For each school that has a schoolwide project plan approved by the SEA, the LEA is not required to—

(i) Comply with any Chapter 1 requirements prohibiting the commingling of funds available under this part with funds available for regular programs in order to show that Chapter 1 funds benefit only educationally deprived children;

(ii) Identify particular children as eligible to participate in the schoolwide project, but shall identify educationally deprived children for the purpose of paragraphs (b), (c), and (f) of this section; and

(iii) Demonstrate that the particular services paid for with Chapter 1 funds supplement the services regularly provided in that school.

(e) *Use of funds.* In addition to the activities included in Reg. 200.4, the LEA may use funds made available under this part in schoolwide project for—

(1) Planning and implementing effective schools programs; and

(2) Other activities to improve the instructional program and pupil services in the school such as—

(i) Reducing class size;

(ii) Training staff and parents; and

(iii) Implementing extended-day programs.

(f) *Accountability requirements.* (1) Except as provided in paragraph (f)(2) of this section, in order to continue a schoolwide project, an LEA must be able to demonstrate after three years for each school participating in a schoolwide project that—

(i) The achievement gains of educationally deprived children in the school exceed the average achievement gains of comparable participating Chapter 1 children in the LEA as a whole; or

(ii) The achievement gains of educationally deprived children in the school exceed the average achievement gains of comparable educationally deprived children in that school in the three fiscal years prior to the start of the schoolwide project.

(2) For a secondary school, if achievement levels over the three-year schoolwide project period as compared with the three-year period immediately preceding the schoolwide project do not decline, demonstration of lower dropout rates, increased retention rates, or increased graduation rates are acceptable in lieu of increased achievement.

(3) If the SEA determines that a schoolwide project meets the requirements in paragraph (f)(1) or (2) of this section at the end of the three-year period provided in paragraph (d)(1) of this section, the SEA shall allow the LEA to continue the schoolwide project for an additional three years.

(4)(i) For the purpose of paragraph (f)(1) and (2) of this section, the LEA shall annually collect achievement and other assessment data for each school participating in a schoolwide project.

(ii) The LEA shall make the results of the annual collection of achievement and other assessment data available to parents, the public, and the SEA.

(5) The program improvement requirements in Regs. 200.37-200.38 apply to schoolwide projects under this section.

(g) *Participation of children enrolled in private schools.* In determining which private school children residing in the school attendance area of a school participating in a schoolwide project are eligible for Chapter 1 services, the LEA shall apply which ever method it selected under paragraph (c)(1)(i)(A) or (B) of this section.

(Authority: 20 U.S.C. 2725, 2728(c), 2730-2731)

Reg. 200.37 What are an SEA's responsibilities for program improvement?

(a) *SEA program improvement plan.* (1) An SEA shall develop, in consultation with the committee of practitioners under Reg. 200.70(e), a plan to ensure implementation of the provisions of paragraph (b) of this section and Reg. 200.38.

(2) The SEA's plan must contain, but is not limited to, the following: (i) The objective measures and standards the SEA and LEAs will use to assess aggregate performance and substantial progress toward meeting desired outcomes. The SEA may establish standards to be included in the plan to improve the educational opportunities of educationally deprived children by helping those children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills.

(ii) The means the SEA will use to develop a joint plan with an LEA that has identified, under Reg. 200.38(b), a school in need of program improvement to attain satisfactory student progress.

(iii) In accordance with Reg. 200.38(b)(6), the timetable for developing and implementing a joint plan with an LEA.

(iv) The program improvement assistance to be provided to a school identified under Reg. 200.38(b)(6), which may include, but is not limited to—

(A) Training and retraining personnel;

(B) Developing curricula that have shown promise in similar schools;

(C) Replicating promising practices in effective schools models;

(D) Improving coordination between programs assisted under Chapter 1 and the regular school program; and

(E) Developing innovative strategies to enhance parental involvement.

(3) The SEA shall—

(i) Disseminate its plan to all LEAs and other State agencies that receive funds under Chapter 1; and

(ii) Make the plan available at the SEA for inspection by the Secretary.

(4) The SEA may amend its plan, if necessary, after consultation with the committee of practitioners.

(b) *SEA assistance to LEAs.* (1)(i) If funds are appropriated for the implementation of school improvement programs under section 1405 of the Act, an SEA shall fully implement the program improvement activities described in this section and Reg. 200.38.

(ii) If funds are not appropriated under section 1405 of the Act, the SEA shall at a minimum—

(A) With the least possible paperwork and burden, follow the progress of any school identified by an LEA under Reg. 200.38(b)(1);

(B) Develop and implement with LEAs joint plans for program improvement under Reg. 200.38(b)(6);

(C) Ensure that program improvement assistance is provided to each school identified under Reg. 200.38(b)(6); and

(D) Conduct other program improvement activities to the extent practicable.

(2) An LEA may apply to the SEA for program improvement assistance funds appropriated under section 1405 of the Act.

(Authority: 20 U.S.C. 2730, 2731(c)-(d), (g)-(i), 2825, 2851(b)).
[54 FR 27793, June 30, 1989]

Reg. 200.38 What are an LEA's responsibilities for program improvement?

(a) *Local review.* For each project school, an LEA shall—

(1)(i) Conduct an annual review of the effectiveness of its Chapter 1 project in improving student performance as measured by aggregate performance and the desired outcomes described in the LEA's application; and

(ii) Make the results of the review available to teachers, parents of participating children, and other appropriate parties, including principals of schools attended by Chapter 1 children;

(2) Determine whether improved performance is sustained over a period of more than 12 months as required by Reg. 200.38(b)(6)(iv)(C); and

(3) Use the results of the review and the LEA's evaluation under section 1019 of the Act in program improvement efforts required by paragraph (b) of this section.

(b) *School program improvement.* (1) Except as provided in paragraph (b)(4) of this section, an LEA shall implement the requirements in paragraph (b)(2) of this section with respect to each school that—

(i) Does not show substantial progress toward meeting the desired outcomes described in the LEA's application; or

(ii)(A) Shows no improvement or a decline in aggregate performance of participating children for a 12-month period. No improvement or a decline in aggregate performance occurs if participating children, in the aggregate, in the school fail to make gains beyond that which they would be expected to make in the absence of the additional help the program provided.

(B)(1) Unless the conditions in paragraph (b)(1)(ii)(B)(2) of this section exist, the LEA is only required to determine the aggregate performance of a school in the instructional area that is the primary focus of the Chapter 1 LEA Program in that school.

(2) If the Chapter 1 LEA Program in that school addresses two or more instructional areas with relatively equal emphasis, the LEA shall determine aggregate performance in each area.

(2) For each school identified under paragraph (b)(1) of this section, the LEA shall develop and implement, in coordination with the school, a plan for program improvement that—

(i) Describes how the LEA will identify and modify Chapter 1 programs for each school and its participating children under this section;

(ii) Incorporates those program changes that have the greatest likelihood of improving the performance of educationally deprived children, including—

(A) A description of educational strategies designed to achieve the LEA's desired outcomes or otherwise to improve the performance and meet the needs of participating children;

(B) A description of the resources, and how those resources will be applied, to carry out the strategies selected, including, as appropriate—

(1) Qualified personnel;

(2) Inservice training;

(3) Curriculum materials;

(4) Equipment;

(5) Physical facilities;

(6) Technical assistance;

(7) Alternative curriculum that has shown promise in similar schools;

(8) Improving coordination between the Chapter 1 LEA Program and the regular school program;

(9) Evaluation of parental involvement;

(10) Appropriate inservice training for Chapter 1 staff and other staff who teach participating children; and

(11) Other measures selected by the LEA.

(3) The LEA shall—

(i) Submit the plan to the local school board and the SEA; and

(ii) Make the plan available to parents of participating children in the school.

(4) The LEA is not required to—

(i) Develop a school improvement plan for a school that served 10 or fewer children for the entire school year; or

(ii) Complete and implement a school improvement plan under development if data become available during plan development or prior to plan implementation that demonstrates that there has been a gain in aggregate performance and that substantial progress has been made toward meeting the desired outcomes.

(5)(i) The LEA shall develop a timeline for implementation of each school's plan, taking into consideration the degree of change needed, the nature of the changes, and other relevant factors.

(ii)(A) The plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the school year during which the school did not show substantial progress toward meeting the LEA's desired outcomes or showed no improvement or a decline in aggregate performance of participating children.

(B) If full implementation of the plan requires the maximum time allowed under paragraph (b)(5)(ii)(A) of this section, the LEA shall implement portions of the plan as soon as possible.

Example: An LEA determines that a school, during the 1988-89 school year, has shown a decline in aggregate performance. The LEA must develop and fully implement a school improvement plan in that school as soon as possible but not later than September 1990. For example, if the necessary changes can be accomplished quickly, such as purchasing readily available materials or equipment, the LEA would be able to implement its plan by September 1989. On the other hand, if the needed changes require a complete redesign of the LEA's project, the LEA might not be able to implement the plan fully before September 1990. In this case, the LEA must implement portions of the plan as soon as possible. For example, the LEA develops and implements a staff training program during the 1989-90 school year in preparation for full implementation of the plan in September 1990.

(6)(i) If, after the LEA's plan has been in effect for one full school year, the school is still identified as needing improvement under paragraph (b)(1) of this section, the LEA shall, with the SEA, develop and implement a joint plan for program improvement in the school.

(ii) The joint plan must—

(A) Be developed and implemented in consultation with school staff and parents of participating children; and

(B) Be approved by both the SEA and LEA before the plan may be implemented.

(iii)(A) The joint plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the full school year during which the LEA's plan under paragraph (b)(2)-(5) of this section was in effect.

(B) If full implementation of the joint plan requires the maximum time allowed under paragraph (b)(6)(iii)(A) of this section, the SEA and LEA shall implement portions of the plan as soon as possible.

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(iv) If the SEA finds that, after the joint plan has been in effect for one full school year, a school continues to need improvement under paragraph (b)(1) of this section, the SEA, with the LEA, shall—

(A) Review the plan;

(B) Make revisions that are designed to improve performance; and

(C) Continue to review and revise the joint plan each consecutive year until improved performance is sustained over a period of more than 12 months.

(v) Nothing in this section or Reg. 200.37 shall be construed to give the SEA any authority concerning the educational program of an LEA that does not otherwise exist under State law.

Example: Both the LEA and SEA should follow the progress of the LEA's school improvement plan during the first full school year of implementation. In the example following paragraph (b)(5) of this section, if a plan is implemented by September 1989, school year 1989-90 would be the first full school year. If after one full year of implementation (school year 1989-90), the LEA determines that the school still has not improved, the LEA must develop and fully implement a joint program improvement plan with the SEA before the beginning of the second school year following the full school year the LEA's plan was in effect. Thus, in this example, the joint plan would have to be developed and fully implemented by the beginning of the 1991-92 school year. If the maximum time is needed, portions of the joint plan must be implemented as soon as possible. For example, if full implementation cannot be accomplished until the beginning of the 1991-92 school year, the LEA might be required to implement a staff training program during the 1990-91 school year in preparation for full implementation of the joint plan in school year 1991-92.

For an LEA that is unable to implement fully the school improvement plan until September 1990, school year 1990-91 would be the first full school year. If after one full year of implementation (school year 1990-91), the LEA determines that the school still has not improved, the LEA must develop and fully implement a joint program improvement plan with the SEA before the beginning of the second school year following the full school year the LEA's plan was in effect. Thus in this example, the joint plan would have to be developed and fully implemented by the beginning of the 1992-93 school year. If the maximum time is needed, portions of the joint plan must be implemented as soon as possible. For example, if full implementation cannot be accomplished until the beginning of the 1992-93 school year, the LEA might be required to implement a staff training program during the 1991-92 school year in preparation for full implementation of the joint plan in school year 1992-93.

(c) *Local conditions.* (1) The LEA and the SEA, in performing their responsibilities under this section, shall take into consideration—

(i) The mobility of the student population;

(ii) The extent of educational deprivation among participating children that may negatively affect improvement efforts;

(iii) The difficulties involved in dealing with older children in Chapter 1 programs in secondary schools;

(iv) Whether indicators other than improved achievement demonstrate the positive effects on participating children of Chapter 1 activities; and

(v) Whether a change in the review cycle under section 1019 of the Act or paragraph (a)(1) of this section or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for a particular year.

(2) The local conditions in paragraph (c)(1) of this section may be considered, as appropriate, at any point in the program improvement process, including the following:

(i) Determining the extent of services needed to meet desired outcomes in the LEA's application.

(ii) Allocating resources to schools.

(iii) Determining how substantial progress toward meeting desired outcomes will be measured.

(iv) Identifying a school in need of program improvement under paragraph (b)(1) of this section.

(v) Identifying a school that continues to need program improvement under paragraph (b)(6) of this section.

(d) *Student program improvement.* On the basis of the evaluation under section 1019 of the Act and local reviews under paragraph (a) of this section, an LEA shall—

(1) Identify all students who have been served for a school year and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under Reg. 200.20(a)(4); or

(ii) Whose performance shows no improvement or a decline;

(2) Consider modifications in the LEA's Chapter 1 project to serve those students better;

(3) Conduct a thorough assessment of the educational needs of children who remain in the LEA's Chapter 1 project after two consecutive years of participation and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under Reg. 200.20(a)(4); or

(ii) Whose performance shows no improvement or a decline; and

(4) If appropriate, use the results of that needs assessment to modify the Chapter 1 project to meet the children's needs.

(e) *Private school children.* Program improvement and student improvement activities under this section must include participating children in private schools in accordance with section 1017 of the Act.

(f) *Effective date.* An LEA shall begin identifying schools and students in need of program improvement based on information gathered before or during the 1988-89 school year.

(g) *Technical assistance centers.* In carrying out the program improvement and student improvement activities under this section, an LEA and SEA shall utilize the resources of the regional technical assistance centers and appropriate regional rural assistance programs established under section 1456 of the Act to the full extent those resources are available.

(Authority: 20 U.S.C. 2731)
[54 FR 27793, June 30, 1989]

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Reg. 200.39 How may personnel be assigned non-Chapter 1 duties?

(a) An LEA may assign public school personnel paid entirely with funds available under this part to limited supervisory duties that may provide some benefit to children not participating in the Chapter 1 project if—

(1) Similarly situated personnel at the same school site, who are not paid with funds available under this part, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non-Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The duties in paragraph (a) of this section need not be limited to classroom instruction and may include, but are not limited to, the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853(a))

Subpart E—What Fiscal Requirements Apply To The Chapter 1 LEA Program?

Reg. 200.40 What is the prohibition against using funds under this part to provide general aid?

An LEA may use funds available under this part only for projects that are designed and implemented to meet the special educational needs of educationally deprived children who are—

(a) Identified and selected in accordance with Reg. 200.31; and

(b) Included in the LEA's application that has been approved by the SEA.

(Authority: 20 U.S.C. 2721(a), 2722(b), 2724)
[54 FR 27793, June 30, 1989]

Reg. 200.41 What maintenance of effort requirements apply to this program?

(a)(1) *Basic standard.* Except as provided in Reg. 200.42, an LEA may receive its full allocation of funds under this part if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is Federal fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title 1 of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under Reg. 200.42 is not granted, the SEA shall reduce the LEA's allocation of funds under this part in the exact proportion by which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(1), (2))
[54 FR 27793, June 30, 1989]

Reg. 200.42 Under what circumstances may an SEA waive the maintenance of effort requirement?

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in Reg. 200.41 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of funds available under this part the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LE secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(3))
[54 FR 27793, June 30, 1989]

Reg. 200.43 What comparability of services requirements apply to this program?

(a) Except as provided in paragraph (b) of this section and Reg. 200.45, an LEA may receive funds under this part only if, on a districtwide or grade span basis,—

(1) The LEA uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving funds under this part; or

(2) In the event the LEA selects all its school attendance areas as project areas, the LEA uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(b) An LEA with not more than one school attendance area for each grade span is not required to meet the comparability requirements in paragraph (a) of this section.

(c)(1) An LEA shall be considered to have met the comparability requirements in paragraph (a) of this section if it either—

(i) Files with the SEA a written assurance that it has established and implemented—

(A) A districtwide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; or

(ii) Establishes and implements other measures for determining compliance such as the following:

(A) Compares the average number of students per instructional staff in each project school with the average number of students per instructional staff in schools not participating in programs under this part. A project school is comparable if its average does not exceed 110 percent of the average of schools not participating in programs under this part.

(B) Compares the average instructional staff salary expenditure per student in each project school with the average instructional staff salary expenditure per student in schools not participating in programs under this part. A project school is comparable if its average is at least 90 percent of the average of schools not participating in programs under this part.

(2) In determining compliance with paragraph (a) of this section, an LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(d)(1) An LEA shall develop written procedures to ensure compliance with paragraph (a) of this section.

(2) The written procedures must include a process for demonstrating that State and local funds are used to provide services in project areas that are at least comparable to the services provided with State and local funds in school attendance areas that are not receiving services with funds under this part.

(e) An LEA shall maintain annual records documenting compliance with paragraph (a) of this section.

(f)(1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the measures established under paragraph (c) of this section.

(Authority: 20 U.S.C. 2728(c), (d))
[54 FR 27793, June 30, 1989]

Reg. 200.44 What supplement, not supplant requirement applies to this program?

(a) Except as provided in Reg. 200.45(a)(1), an LEA may use funds available under this part only to supplement and, to the extent practicable, increase the level of non-Federal funds that would, in the absence of funds under this part, be made available for the education of pupils participating in Chapter 1 projects, and in no case may funds available under this part be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through use of a particular instructional method or in a particular instructional setting.

(Authority: 20 U.S.C. 2728(b), (d))
[54 FR 27793, June 30, 1989]

Reg. 200.45 How may an LEA exclude special State and local funds from comparability and supplement, not supplant determinations?

(a) *General rule.* (1) For the purpose of determining compliance with the comparability requirements in Reg. 200.43 and the supplement, not supplant requirement in Reg. 200.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(ii) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the purpose of determining compliance with the comparability requirements in Reg. 200.43 only, an LEA may also exclude State and local funds spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(1)(i) and (2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1)(i) of this section meets the requirements in section 1018(d)(1)(B) of the Act; or

(ii) A state phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making a determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special loan program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the local law and implementing rules, regulations, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728(b), (c), (d))
[54 FR 27793, June 30, 1989]

Reg. 200.46 What is the maximum amount of funds an LEA may carry over?

(a) *Limitation on carryover.* The amount of funds allocated to an LEA under Regs. 200.22-200.25 that remains available for obligation for one additional year under section 412(b) of GEPA is limited to—

(1) No more than 25 percent of the funds allocated to the LEA from the Federal fiscal year 1989 appropriation (allocated to the LEA for the period July 1, 1989-September 30, 1990); and

(2) No more than 15 percent of the funds allocated to the LEA from the Federal fiscal year 1990 appropriation (allocated to the LEA for the period July 1, 1990-September 30, 1991) and each subsequent year's appropriation.

(b) *Exceptions.* (1) The percentage limitations in paragraph (a) of this section do not apply to an LEA that receives less than $50,000 under Regs. 200.22-200.25 for any fiscal year.

(2) An SEA may grant an LEA a waiver of the percentage limitations in paragraph (a) of this section if—

(i) The SEA determines, on a one-time basis, that the LEA's request for the waiver is reasonable and necessary; or

(ii) A supplemental Chapter 1 appropriation becomes available for obligation in any fiscal year.

(Authority: 20 U.S.C. 2832(b), 1225(b))

Reg. 200.47 What is the prohibition against considering payments under this part in determining State aid?

A State may not take into consideration payments under this part in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

Regs. 200.48- [Reserved]
200.49

Subpart F—What Requirements Govern Participation In The Chapter 1 LEA Program Of Educationally Deprived Children In Private Schools?

GENERAL

Reg. 200.50 What are an LEA's responsibilities for providing Chapter 1 services to children in private schools?

(a)(1) An LEA shall provide to educationally deprived children, who reside in a project area of the LEA and who are enrolled in private elementary and secondary schools, special educational services and arrangements as will ensure those children's participation on an equitable basis in accordance with the requirements in Regs. 200.50 through 200.55 and section 1017 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(3) The LEA shall exercise administrative direction and control over funds and property made available under this part that benefit educationally deprived children in private schools.

(4)(i) Services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency, or corporation who or which, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) If an LEA allegedly fails to provide for the equitable participation of children in private schools, a parent, teacher, or other concerned individual or organization may file a complaint with the Secretary.

(2) For the purpose of this section, a complaint is a signed, written statement, including documentary evidence, alleging that an LEA has failed to meet its obligation under section 1017(a) of the Act to provide equitable services to children enrolled in private schools.

(3) The Secretary investigates a complaint and issues a letter of finding within 120 days after receipt of the complaint.

(Authority: 20 U.S.C. 2727(a), (b))

Reg. 200.51 What are the requirements for consultation with private school officials?

(a) An LEA shall consult with appropriate private school officials—

(1) During all phases of the design and development of the LEA's Chapter 1 project, including consideration of—

(i) Which children will receive services;

(ii) How the children's needs will be identified;

(iii) What services will be offered;

(iv) How and where the services will be provided; and

(v) How the project will be evaluated; and

(2) Before the LEA makes any decision that affects the opportunities of eligible private school children to participate in the LEA's Chapter 1 project.

(b) The LEA shall give private school officials a genuine opportunity to express their views regarding each matter subject to the consultation requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 2727(a))

Reg. 200.52 What factors does an LEA use in determining equitable participation?

(a) *Equal expenditures.* (1) Expenditures of funds made available under this part for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special education needs of such children) to expenditures of funds made available under this part for children enrolled in the public schools of the LEA.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an LEA shall pay for reasonable and necessary administrative costs of providing services to public and private school children, including special capital expenses defined in Reg. 200.57(a)(2), from the LEA's whole allocation of funds under this part.

(b) *Services on an equitable basis.* (1) The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(2) Services are equitable if the LEA—

(i) Assesses, addresses, and evaluates the specific needs and educational progress of eligible private school children on the same basis as public school children;

(ii) Provides, in the aggregate, approximately the same amount of instructional time and materials for each private school child as it provides for each public school child;

(iii) Expends equal amounts on services for public and private school children in accordance with paragraph (a) of this section; and

(iv) Provides private school children with an opportunity to participate that is equitable to the opportunity provided to public school children.

(Authority: 20 U.S.C. 2727(a))

Reg. 200.53 What are the requirements to ensure that funds do not benefit a private school?

(a) An LEA shall use funds under this part to provide services that supplement, and in no case supplant, the level of services that would, in the absence of Chapter 1 services, be available to participating children in private schools.

(b) An LEA shall use funds under this part to meet the special educational needs of participating children in a private school, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 2727(a), 2728(b))

Reg. 200.54 What are the requirements concerning equipment and supplies for the benefit of private school children?

(a) To meet the requirements of section 1017 of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with funds under this part for the benefit of educationally deprived children in private schools.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used only for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2727(a))

Reg. 200.55 May funds be used for construction of private school facilities?

No funds under this part may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 2727(a))

CAPITAL EXPENSES

Reg. 200.56 How does a State receive a payment for capital expenses?

(a) From the amount appropriated for capital expenses under section 1017(d) of the Act, the Secretary pays a State an amount that bears the same ratio to the amount appropriated as the number of private school children in the State who were served under Chapter 1 of the ECIA during the period July 1, 1984 through June 30, 1985 bears to the total number of private school children served during that period in all States.

(b) The Secretary reallocates funds not used by a State for purposes of Reg. 200.57 among other States on the basis of need.

(Authority: 20 U.S.C. 2727(d))

Reg. 200.57 How does an LEA receive a payment for capital expenses?

(a)(1) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable Chapter 1 services to eligible children in private schools—

(i) Has paid from funds provided under Chapter 1 of the ECIA since July 1, 1985;

(ii) Is currently paying from funds provided under this part; or

(iii) Would incur because of an expected increase in the number or percentage of private school children to be served.

(2) "Capital expenses" means only expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar v. Felton*. These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including but not limited to mobile educational units and leasing of rental sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services; and

(ii) Do not include the purchase of instructional equipment such as computers.

(b) The LEA's application for payments under this section must contain—

(1) The amount, by fiscal year, of capital expenses paid from funds under this part and Chapter 1 of the ECIA since July 1, 1985;

(2) The nature of the capital expenses;

(3) An assurance that the LEA will use payments received under this section in accordance with Reg. 200.58;

(4) An assurance that the LEA has consulted with appropriate private school officials in preparation of its application;

(5) If appropriate, information sufficient to support anticipated increases in the number or percentage of private school children to be served; and

(6) Any other information the SEA may need to make a determination of need under paragraph (c) of this section.

(c) An SEA shall distribute funds it receives under Reg. 200.56 to LEAs that apply on the basis of need. In determining need, the SEA shall establish criteria such as the following:

(1)(i) The extent to which payments under this section would be used by an LEA to increase the number or percentage of private school children served; or

(ii) The extent to which an LEA is providing Chapter 1 services to at least the same number or percentage of private school children the LEA served during the period July 1, 1984 through June 30, 1985.

(2) The degree to which the quality of services an LEA is providing or would provide to private school children equals or exceeds the quality of services provided during the period July 1, 1984 through June 30, 1985.

(3) The percentage of funds the LEA has paid for capital expenses in relation to its basic Chapter 1 grant.

(Authority: 20 U.S.C. 2727(d))
[54 FR 27793, June 30, 1989]

Reg. 200.58 How does an LEA use payments for capital expenses?

(a) An LEA shall use payments received under Reg. 200.57 for the following:

(1) To provide Chapter 1 services to benefit, to the extent possible, the public and private school children who were or are adversely affected by the LEA's expenditures for capital expenses.

(2) To cover capital expenses the LEA is incurring or will incur to maintain or increase the number or percentage of private school children being served.

(b) The LEA may not take the payments received under Reg. 200.57 into account in meeting the requirements in Reg. 200.52.

(c) The LEA shall account separately for payments received under Reg. 200.57.

(Authority: 20 U.S.C. 2727(a), (d))
[54 FR 27793, June 30, 1989]

Reg. 200.59 [Reserved]

BYPASS

Reg. 200.60 What general requirements govern the implementation of a bypass?

(a) The Secretary implements a bypass in accordance with the procedures in 34 CFR 76.670 through 76.677 if—

(1) An LEA is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) The Secretary determines, following a complaint or an investigation, that an LEA has substantially failed to provide for the participation on an equitable basis of private school children.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the costs of the services, including any administrative costs, from the appropriate allocation of funds provided under this part to the affected LEA and SEA.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected LEA or SEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2727(b))

Regs. 200.61-200.69 [Reserved]

Subpart G—What Are Other State Responsibilities For The Chapter 1 LEA Program?

Reg. 200.70 Does a State have authority to issue State regulations for the Chapter 1 LEA Program?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits an SEA's—

(1) Responsibility to work jointly with an LEA in suggesting various activities and approaches for program improvement under Regs. 200.37-200.38;

(2) Authority to review and approve an LEA's application including determining that the activities in the application are supported by the LEA's needs assessment; or

(3) Responsibility to ensure that an LEA uses funds under this part in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 programs funded under this part, including those based on State interpretation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(1)(ii) and (iii) of this section, if a State issues major rules or regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation in which a major rule or regulation must be issued within a very limited time to assist LEAs with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs under this part but issues policies that the SEA and LEAs are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Members of local boards of education; and

(E) Representatives of private school children.

(ii) A majority of the committee must be representatives of LEAs.

(iii) Members of the committee must be knowledgeable about the Chapter 1 LEA Program.

(4) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2851)
[54 FR 27793, June 30, 1989]

Reg. 200.71 How may State personnel paid with funds available under this part be assigned to State programs?

(a) As provided in paragraph (b) of this section, an SEA may use funds received under Reg. 200.72(a) to pay the salary costs for any employee assigned to programs funded under this part and special State programs that meet the requirements of Reg. 200.45(a)(1)(i) and (2).

(b) Except as provided in paragraph (c) of this section, salary costs are allowable charges to funds received under Reg. 200.72(a) if the following conditions are met:

(1) An employee's assignments are related to the SEA's administrative, training, and technical assistance responsibilities under the programs.

(2) The SEA maintains contemporaneous time distribution records reflecting the actual amount of time the employee spends on the programs.

(3) The time distribution records are signed by the employee's supervisor.

(4) Actual costs are charged to the programs on the basis of the employee's time distribution records.

(c) If an employee is assigned administrative, training, and technical assistance duties that jointly benefit programs funded under this part and special State programs that meet the requirements of Reg. 200.45(a)(1)(i) and (a)(2), costs may be charged to the programs on a basis other than the time spent on each of the programs, provided charges are equitably distributed among funding sources.

Example: An employee spends three hours developing a manual for LEAs to use to improve parent participation in compensatory programs supported with funds under this part and under a State compensatory education program. Since only one manual is produced, the employee is unable to divide the actual time spent on each program. Therefore, the LEA may prorate costs, for example, to each program on the basis of the proportion of funds allocated for each of the programs benefiting from the manual.

(Authority: 20 U.S.C. 2853(b))
[54 FR 27793, June 30, 1989]

Reg. 200.72 What funds are available for an SEA to carry out its responsibilities?

(a) *Funds for State administration.* (1) Except for programs under Part C of Chapter 1 and as provided in paragraph (a)(2) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(2) The SEA may not use more than 15 percent of the funds referred to in paragraph (a)(1) of this section for indirect costs.

(b) *Funds for implementing school improvement programs.* (1) An SEA shall use funds made available under section 1405 of the Act for direct educational services in schools implementing program improvement plans under Reg. 200.38(b).

(2) Parents of participating children, school staff, the LEA, and the SEA shall jointly agree to the selection of providers of technical assistance and the best use of funds available under paragraph (b)(1) of this section, which may include assistance from—

(i) An institution of higher education;

(ii) A federally supported educational laboratory or center;

(iii) State personnel with expertise in educational improvement;

(iv) Locally, State, or nationally based consultants; and

(v) Other providers of the specific services required by a school's program improvement plan.

(3) The SEA may not use the funds referred to in paragraph (b)(1) of this section for State administration.

(Authority: 20 U.S.C. 2824, 2825)

COMPLAINT PROCEDURES OF THE SEA

Reg. 200.73 What complaint procedures shall an SEA adopt?

An SEA shall adopt written procedures for:

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(a) Receiving and resolving any complaint that the SEA or an LEA is violating a Federal statute or regulations that apply to the Chapter 1 LEA Program;

(b) Reviewing an appeal from a decision of an LEA with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 2831(a))
[54 FR 27793, June 30, 1989]

Reg. 200.74 What are the minimum complaint procedures?

An SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the SEA receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the SEA.

(Authority: 20 U.S.C. 2831(a))

Reg. 200.75 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must include:

(a) A statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Chapter 1 LEA Program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

Regs. 200.76-200.79 [Reserved]

Subpart H—What Are The National Evaluation Standards?

EVALUATION BY AN LEA

Reg. 200.80 How does an LEA evaluate student achievement?

(a) An LEA shall evaluate student achievement under Reg. 200.35(a)(1)(ii) as follows:

(1)(i) The LEA shall assess—

(A) The Chapter 1 participants' achievement in reading, mathematics, and language arts, not including projects designed to teach English to limited English speaking children, in grades 2 through 12, as appropriate, after receiving Chapter 1 services; compared to

(B) An estimate of what their achievement would have been in the absence of Chatper 1 services.

(ii) In assessing achievement in language arts, an LEA may use tests designed to measure language arts or reading. If a reading test is used, the LEA shall assess achievement in both basic and more advanced skills.

(2) With regard to more advanced skills, the LEA shall assess the progress of Chapter 1 participants as measured by—

(i)(A) The "comprehension" or equivalent score of a nationally normed reading test; and

(B) The "problems and applications" or equivalent score of a nationally normed mathematics test; or

(ii) A test without national norms if—

(A) It is the instrument used for other required achievement reporting under this part;

(B) It provides an appropriate "comprehension" and "problems and applications" score; and

(C) The LEA meets the conditions in Reg. 200.82(b)(2).

(b)(1) The LEA shall measure student achievement under paragraph (a) of this section over a period of approximately 12 months.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the LEA shall report on either a spring-to-spring testing interval or a fall-to-fall testing interval.

(ii) An LEA that measured achievement on a fall-spring testing interval during the 1988-89 school year may continue to do so for one additional year only (the 1989-90 school year) if the SEA determines that implementation of the annual cycle in 1989-90 would impose a substantial hardship on the LEA.

Example: An LEA uses the results of a pretest administered in September 1988 and a post-test administered in May 1989 to measure and report on the achievement of children participating in projects under this part during the 1988-89 school year. The SEA determines that it would be a substantial hardship for the LEA to measure and report on children's achievement for the 1989-90 school year on either a spring-to-spring or fall-to-fall testing interval. Therefore, the LEA may continue to report on participating children's achievement on a fall-spring testing interval for the 1989-90 school year. However, the LEA must report on participating children's achievements in school year 1990-91 using either: pre-tests administered during the fall of 1990 and post-tests administered during the fall of 1991; or pre-tests administered during the spring of 1990 and post-tests administered during the spring of 1991.

(c)(1) At least once during the three-year evaluation period required under Reg. 200.35(a), the LEA shall collect additional information to determine whether student achievement gains are sustained over a period of more than 12 months (see Reg. 200.35(a)(2)).

(2) The LEA shall report this information on either a spring-spring-spring testing interval or a fall-fall-fall testing interval.

(d) In estimating expected performance under paragraph (a)(1)(ii) of this section and elsewhere in this subpart, the LEA shall use the performance of children in a norm sample developed locally, by the SEA, or by a test publisher.

(e) Any test instrument used by the LEA under this subpart must be the current edition or the immediately previous edition.

(Authority: 20 U.S.C. 2729(a), (c), 2835)
[54 FR 27793, June 30, 1989]

Reg. 200.81 What technical standards does an LEA apply in evaluating student achievement?

An LEA shall ensure that its procedures for evaluating the achievement of children in programs under this part are consistent with the following technical standards:

(a) Representativeness of evaluation findings.

(b) Reliability and alidity of evaluation instruments and procedures.

(c) Valid assessment of achievement gains.

(d) Quality control mechanisms to minimize error in evaluation procedures.

(Authority: 20 U.S.C. 2729(a), 2835)

Reg. 200.82 What procedures does an LEA use in evaluating student achievement?

Unless it is using approved alternative procedures under Reg. 200.83, an LEA shall use the following procedures to evaluate student achievement in each Chapter 1 project funded under this part that provides instructional services in reading, language arts, or mathematics in grades 2 through 12 during the regular school year.

(a) The LEA shall administer a pretest and a posttest separated by approximately 12 months.

(b) The LEA may use a test with or without national norms as follows:

(1) If the LEA uses a test with national norms, the LEA shall administer the test within the appropriate range of the test publisher's norming dates.

(2) If the LEA uses a test without national norms, the LEA shall adhere to technical requirements for equating this test with a nationally normed test as specified by the Title I Evaluation and Reporting System or other valid methods accepted by the Secretary.

(Authority: 20 U.S.C. 2729(a), 2835)

Reg. 200.83 What alternative procedures may an LEA use?

(a) An LEA may use alternative procedures to those in Reg. 200.82 for evaluating student achievement if, before using the alternative procedures, the LEA obtains the approval of, first, the SEA, and, then, the Secretary.

(b) In order for the SEA and the Secretary to approve alternative procedures, the LEA shall demonstrate that the procedures—

(1) Yield a valid and reliable measure of—

(i) The Chapter 1 children's performance in reading, language arts, or mathematics; and

(ii) The children's expected performance; and

(2) Produce results that can be expressed in the common reporting scale established by the Secretary for SEA reporting.

(Authority: 20 U.S.C. 2729(a), 2835)

Reg. 200.84 How does an LEA report the results of student achievement to the SEA?

(a)(1) In reporting the results of student achievement evaluated under Regs. 200.81-200.83, an LEA shall use—

(i) The common reporting scale established by the Secretary for SEA reporting; or

(ii) Another form of localreporting approved by the SEA.

(2) If the SEA approves another form of reporing, the LEA shall include sufficient informaion to enable the SEA to convert the achievement results to the common reporting scale.

(b) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluation required under Reg. 200.80(c).

(Authority: 20 U.S.C. 2729(a) 2835)

EVALUATION BY AN SEA

Reg. 200.85 What technical standards does an SEA use in conducting its evaluation?

In conducting its evaluation under Reg. 200.35(b), an SEA shall use technical standards that are commensurate with and appropriately reinforce those required of LEAs in Reg. 200.81.

(Authority: 20 U.S.C. 2729(b), 2835)

Reg. 200.86 What requirements govern an SEA sampling plan?

(a) If the SEA wishes to use sampling in its evaluating of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be conducted in a representative sample of its LEAs in any school year.

(b) The Secretary approves a sampling plan that will provide reliable and representative data under this subpart.

(c)(1) The SEA shall review its sampling plan at least once every three years.

(2) If, based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835)

Reg. 200.87 How does an SEA aggregate LEA student achievement data for inclusion in its evaluation?

(a) An SEA shall include, for all LEAs, or a sample of LEAs if a sampling plan has been approved by the Secretary, the following information in its evaluation:

(1) A statewide average of student achievement gains resulting from participation in Chapter 1 projects under this part reported for—

(i) Each participating grade level from 2 through 12; and

(ii) Each of the following subjects: reading, mathematics, and language arts.

(2) A statewide average of progress students are making in more advanced skills, separately for reading and mathematics.

(3) Additional data specified by the Secretary.

(4) If applicable—

(i) The number of students excluded from the evaluation because of erroneous or missing data; and

(ii) The reasons for the exclusion.

(b) The SEA shall—

(1) Report student achievement gains on either a spring-to-spring or fall-to-fall basis; and

(2) Express each statewide average achievement gain in the common reporting scale established by the Secretary.

(Authority: 20 U.S.C. 2729(b), 2835)

ALLOWABLE AND NONALLOWABLE COSTS

Reg. 200.88 For what evaluation activities may an LEA or SEA use funds available under this part?

(a) An LEA or SEA may use funds made available under this part for any of the following evaluation activities:

(1) Identifying specific strengths and weaknesses of a project.

(2) Determining the results of a project.

(3) Disseminating the results of Chapter 1 evaluations.

(b) In addition to the requirement concerning the supplementary nature of funds available under this part in Reg. 200.44 and other rules governing the allowability of Chapter 1 expenditures, the provisions of paragraph (c) of this regulation apply to the use of funds available under this part to support the purchase, administration, scoring and analysis of evaluation instruments.

(c) Except for cases in which data meeting these needs are already available under this part for any of the following:

(1) Testing Chapter 1 participants for evaluation purposes only.

(2) In order to permit the LEA or SEA to convert its evaluation results to the common scale, administering a nationally normed test to all, or a representative sample of, the Chapter 1 participants if the LEA or SEA has used a test without national norms for evaluation purposes.

(3) Testing an appropriate number of children no longer receiving Chapter 1 services to determine whether achievement gains are sustained over a period of more than 12 months (see Reg. 200.35(a)(2)).

(Authority: 20 U.S.C. 2721(a), 2728(b), 2729(a), 2835)

Reg. 200.89 For what evaluation activities may an LEA or SEA not use funds available under this part?

An LEA or SEA may not use funds available under this part for any of the following evaluation activities:

(a) General districtwide or statewide testing programs.

(b) Establishing local or State norms.

(c) Development of tests to meet the standards in this subpart.

(Authority: 20 U.S.C. 2721(a), 2723(b))

EVEN START

(34 Code of Federal Regulations Part 212)

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(Authority: 20 U.S.C. 2741-2749, 2831, unless otherwise noted.)
[Source: 54 FR 12141, March 23, 1989, unless otherwise noted.]

Subpart A—General

Reg. 212.1 What is the Even Start program?

(a) The Even Start program grants funds to eligible local educational agencies (LEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary implements the Even Start program by assisting cooperative projects that build on existing community resources to create a new range of services, integrating early childhood education and adult education for parents.

(Authority: 20 U.S.C. 2741, 2744(a))

Reg. 212.2 Who is eligible for a grant?

(a) An applicant is eligible to receive assistance under the Even Start program if it—

(1)(i) Is an LEA that has within its geographic jurisdiction eligible participants, as defined in paragraph (b) of this section; or

(ii) Is a consortium of LEAs, each of which has within its geographic jurisdiction elibible participants; and

(2) Has collaborated regarding the proposed project with, if organizations, its State educational agency (SEA), or other appropriate nonprofit organizations.

(b) Eligible participants are—

(1) A parent of a child described in paragraph (b)(2) of this section, if the parent is eligible for participation in an adult

education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2); and

(2) A child, age 1 to 7, inclusive, of any eligible parent, who resides in an elementary school attendance area designated for participation in programs under Part A of Chapter 1 of Title I of the Act.

(Authority: 20 U.S.C. 2742(a), 2744(a), 2745)

Reg. 212.3 What activities may the Secretary or States fund?

The Secretary or each SEA, as the case may be, funds family-centered education projects that comply with section 1054 of the Act, and that include all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2744)

Reg. 212.4 What is the duration of a project?

No LEA project may exceed four years.

(Authority: 20 U.S.C. 2747(d))

Reg. 212.5 What regulations apply?

The following regulations apply to the Even Start program:

(a) If the Secretary makes direct grants to LEAs under section 1052(a) of the Act, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) If the Secretary makes grants to States under section 1052(b) of the Act, the EDGAR in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(c) The regulations in this Part 212.

(Authority: 20 U.S.C. 2831(a))

Reg. 212.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act:

Elementary school
Equipment
Local educational agency
Parent
Secretary
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
Facilities
Fiscal year
Grant
Grant period
Grantee
Project

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended.

"State" means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2742(c), 2831(a))

Subpart B—How Does An LEA Or Consortium Of LEAs Apply For A Grant?

Reg. 212.10 To whom does an LEA submit an application?

An application shall submit an application to the Secretary under section 1052(a) of the Act, in the form required by the Secretary, or to the SEA under section 1052(b) of the Act, in the form required by the State, as the case may be.

(Authority: 20 U.S.C. 2746(a))

Reg. 212.11 What requirements apply for submitting an application to the Secretary for anew grant?

Before submitting an application to the Secretary for a new grant under section 1052(a) of the Act, an applicant shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(b) Hold the open meeting; and

(c) Consider comments obtained at the meeting in developing the final application.

(Authority: 20 U.S.C. 3386)

Subpart C—How Does The Secretary Make A Grant?

NEW GRANTS

Reg. 212.20 How does the Secretary evaluate an application for a new grant?

(a) *Review panel.* (1) The Secretary appoints a panel to review applications in accordance with section 1057 of the Act.

(2) In order for the applicant to be considered for a new grant, a majority of the panel members must agree, in accordance with section 1057(a)(5) of the Act, that the applicant has adequately demonstrated its ability to provide the additional funding required by section 1054(c) of the Act.

(3)(i) The panel evaluates an application for a new grant on the basis of the criteria in Reg. 212.21.

(ii) The panel gives up to 100 points for these criteria.

(iii) The maximum possible score for each complete criterion in Reg. 212.21 is indicated in parentheses.

(b) *Additional factors.* The Secretary then applies the additional considerations in Reg. 212.22 to make grants.

(Authority: 20 U.S.C. 2747)

Reg. 212.21 What selection criteria are used in making grants?

The following criteria are used to evaluate an application for a new grant:

(a) *Likelihood of success in meeting the Even Start goals* (35 total points). The Secretary reviews each application to determine the extent to which the proposed project will provide a family-centered education program that includes activities to promote literacy of participating parents, train parents to support the educational growth of their children, and prepare children for success in regular school programs. In applying this criterion the Secretary determines the extent to which the project described in the application—

(1) Contains clear, attainable, measurable objectives against which the progress and success of the project will be measured (5 points);

(2) Includes appropriate activities, services, and timelines to achieve those objectives (5 points);

(3) Designates responsibilities to specific personnel who are qualified to administer and implement the project and to provide special training necessary to prepare staff for the program (5 points);

(4) Includes an effective plan to ensure proper and efficient administration of the project (5 points);

(5) Is based on sound research in the areas of early childhood education, adult literacy, and parenting education (5 points);

(6) Contains instructional and developmental activities appropriate to the level of the participants to be served (5 points); and

(7) Provides for continuity of services to maintain progress by, for example, providing continuous services through the summer months (5 points).

(b) *Percentage of eligible children and parents to be served* (10 points). (1) The Secretary reviews each applications to determine the total percentage of eligible children and parents that will be served under the proposed project. This percentage is determined by dividing the number of parents and children to be served by the project by the total number of eligible parents and children who are not currently receiving these or similar family-centered services.

(2) The Secretary gives points on the basis of that percentage, as follows:

more than 80%	10 points
70-79%	8 points
86-69%	6 points
50-59%	5 points
40-49%	4 points
30-39%	3 points
20-29%	2 points
1-19%	1 point

(3) As used in paragraph (b)(1) of this section, the term "similar family-centered services" means services that—

(i) Focus on the parents and children as a unit;

(ii) Are designed so that parents and children can work on activities together, with services provided in the home to the extent possible; and

(iii) Are designed—

(A) To help parents become full partners in the education of their children;

(B) To assist children in reaching their full potential as learners; and

(C) To ensure that parents are provided with literacy training.

(c) *Degree of cooperation and coordination* (30 total points). The Secretary reviews each application to determine the extent to which cooperation and coordination will take place in all phases of the proposed project among a variety of relevant service providers, including those funded under the programs listed in section 1054(b)(7) of the Act. The Secretary considers the extent to which—

(1) The applicant has made a survey of all relevant providers and is fully aware of similar and related services, including State and locally funded programs, being provided to eligible children and adults (5 points);

(2) The applicant has, in planning the project, engaged various providers in discussions that have resulted in firm agreements for a specific cooperative activities (10 points);

(3) The plan of operation includes specific provision for additional cooperative efforts with other service providers, including State and locally funded providers, throughout the duration of the project (5 points); and

(4) Services offered by the applicant will build upon, but not duplicate, those being provided to project participants by the applicant or other service providers (10 points).

(d) *Reasonableness of budget* (10 points). The Secretary reviews each application to determine the extent to which the budget submitted for the entire cost of the proposed project appears reasonable, given the scope of the project. The Secretary considers the extent to which—

(1) Costs are reasonable in relation to expected outcomes;

(2) The applicant will make use of currently available resources such as facilities and equipment; and

(3) The budget provides sufficient information to support the requested amount of funds.

(e) *Promise as a model* (15 total points). The Secretary reviews each application to determine the extent to which the proposed project shows promise in providing a model that may be transferred to other LEAs. The Secretary considers the extent to which—

(1) The preliminary evaluation plan described in the application—

(i) Measures the progress and success of the project in achieving its clearly stated and attainable objectives;

(ii) Utilizes concrete and quantifiable means of measurement; and

(iii) Includes, if possible, comparisons with appropriate control groups (8 points);

(2) The general components of the project are readily understandable and usable by other entities, and are based on research or models that have proven to be adaptable to various circumstances (5 points); and

(3) The applicant shows a willingness to serve as a model and to disseminate detailed information about the project to the Department and to other LEAs (2 points).

(Authority: 20 U.S.C. 2744(b)(7), 2747, 2831(a))
(Approved by the Office of Management and Budget under control number 1810-0540.)

Reg. 212.22 What additional factors does the Secretary consider in making new grants?

(a) The Secretary, in approving grants, ensures that—

(1) Each project builds on existing community resources in a cooperative effort to create a new range of services integrating early childhood education and adult education for parents into a unified program; and

(2)(i) Grants are made to LEAs that are representative of urban and rural regions of the United States.

(ii) Grant funds are distributed equitably among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into categories of "urban" and "rural" on the basis of paragraph (c) of this section;

(2) In each category—

(i) Determines the highest scoring application from each State and places these applications in order of their scores; and

(ii) Places all remaining applications in order of their scores; and

(3) Funds equal numbers of projects in each category provided there are sufficient acceptable applications in each category, by—

(i) First funding acceptance applications from paragraph (b)(2)(i) of the section in order of their scores; and

(ii) Then funding acceptable applications under paragraph (b)(2)(ii) of this section in order of their scores.

(c)(1) For the purpose of this section, urban LEAs are those within Standard Metropolitan Statistical Areas (SMSAs), as most recently designated by the United States Department of Commerce, Bureau of Census, and rural LEAs are those outside the boundaries of SMSAs.

(2) If an LEA includes areas both within the outside of an SMSA, the applicant shall designate the category in which the majority of expected participants reside.

(d) To the extent that acceptable applications are received from the various States, the Secretary does not give grants to LEAs in one State in amounts that, in total, exceed the amount that the State would be allocated under section 1053(b) of the Act if the appropriation for the Even Start program equals $50 million.

(Authority: 20 U.S.C. 2741, 2747(a)(6), (c), (d)(2))

Reg. 212.23-212.24 [Reserved]

CONTINUATION AWARDS

Reg. 212.25 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?

(a) If funds are insufficient for the Secretary to fund all continuation requests in the amount at which each request would otherwise be funded ("approvable grant" amounts), the Secretary reduces the approvable grant awards for continuation requests on a *pro rata* basis.

(b) The Secretary does not reduce funding for a project for any fiscal year more than 25 percent below its approvable grant level, subject to paragraph (c) of this section.

(c) If funds are insufficient to fund all continuation awards at 75 percent of their approvable grant levels, the Secretary—

(1) Ranks all continuation requests based on the criteria in Reg. 212.21, taking into account information collected throughout the project period, including yearly progress reports, the application submitted in the first year, and revisions to that application; and

(2) Funds continuation requests based on that rank ordering, at 75 percent of approvable grant levels until funds are exhausted.

(d) If the ranking procedure in paragraph (c) of this section does not result in the distribution of awards consistent with the requirements of Reg. 212.22(a), the Secretary adjusts the selection process so as to meet those requirements.

(Authority: 20 U.S.C. 2831(a))

Reg. 212.26 What actions may the Secretary or an SEA take if a grantee does not make sufficient progress toward meeting its project objectives?

If the Secretary or an SEA finds, after the first, second, or third year of a project, that the grantee has not made sufficient progress toward meeting its project objectives, the Secretary or SEA may—

(a) Approve revisions to the project, proposed by the LEA, if those revisions would enable the grantee to meet its project objectives; or

(b) After affording the LEA notice and an opportunity for a hearing, refuse to make a continuation award to the LEA for the project.

(Authority: 20 U.S.C. 2747(d)(1))

Subpart D—[Reserved]

Subpart E—Transition Provisions

Reg. 212.40 How are grants made in a fiscal year in which responsibility for making grants to applicants transfers between the Department and the SEAs?

If the responsibility for administering the Even Start program transfers from the Department to the SEAs, or *vice versa*—

(a) The Secretary applies—

(1) 34 CFR 75.253 with the exception of 34 CFR 75.253(a)(2);

(2) Section 212.26; and

(3) Section 212.25, if necessary;

(b)(1) An SEA shall continue a project grant for the total original period of time for which the grant was made if, for each project—

(i) The grantee shows that it is making sufficient progress toward meeting the objectives of the project;

(ii) The grantee meets applicable State requirements for continuation awards; and

(iii) Sufficient funds exist for the SEA to continue all project grants;

(2) For the project period, funds unobligated by a grantee in one project year remain with the grantee, and the SEA deducts from the subsequent year's continuation award an amount equal to the unobligated funds;

(3) After making continuation awards, the SEA shall use any remaining funds to make grants to new applicants; and

(c) The Federal share limitations contained in section 1054(c) of the Act are determined from the original year of the project grant award.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2747(d), 2831(a))
[FR Doc. 89-6939 Filed 3-22-89; 8:45 am]

Subpart F—Migrant Education Even Start

Authority: 20 U.S.C. 2741-2749, 2831, unless otherwise noted.

Reg. 212.50 What is the Migrant Education Even Start program?

(a) The Migrant Education Even Start program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary makes grants for family-centered education projects that provides services on an intrastate or interstate basis, and that include all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2741, 2743, 2831)
[54 FR 22730, May 25, 1989]

Reg. 212.51 Who is eligible for a grant?

An SEA or a consortium of SEAs that applies under section 1053(a) of the Act is eligible to receive a grant under the Migrant Education Even Start program.

(Authority: 20 U.S.C. 2743, 2831)
[54 FR 22730, May 25, 1989]

Reg. 212.52 Who may be served?

Persons who may be served by a project under this subpart are—

(a) A parent of a child described in paragraph (b) of this section, if the parent is eligible for participation in an adult basic education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2); and

(b)(1) As a first priority, a currently migratory child, aged 1 to 7 inclusive, as defined in 34 CFR 201.3; and

(2) As a second priority and if space is available, a formerly migratory child, aged 1 to 7 inclusive, as defined in 34 CFR 201.3.

(Authority: 20 U.S.C. 2743, 2745, 2831)
[54 FR 22730, May 25, 1989]

Reg. 212.53 What application does the Secretary consider?

The Secretary considers an application that—

(a) Meets the purposes of the Migrant Education Even Start program as provided in Reg. 212.50; and

(b) Adequately demonstrates the applicant's ability to provide the additional funding required by section 1054(c) of the Act.

(Authority: 20 U.S.C. 1070d-2(a) and (c), 2743)
[54 FR 22730, May 25, 1989]

Reg. 212.54 How does the Secretary evaluate an application for a new grant?

(a) The Secretary uses the criteria in Reg. 212.55 to evaluate an application.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum number of points for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1070d-2(a) and (c), 2743)
[54 FR 22730, May 25, 1989]

Reg. 212.55 What selection criteria does the Secretary use in making new grants?

The Secretary uses the criteria in Reg. 212.21 in evaluating an application, except that—

(a) In each place term "LEA" appears, the term is considered to mean "SEA";

(b) The criterion in Reg. 212.21(b) (Percentage of eligible children and parents to be served) does not apply; and

(c) The maximum number of points possible under the criterion in Reg. 212.21(e) (Promise as a model) is 20. These points are distributed as follows:
Reg. 212.21(e)(1)—(9 points),
Reg. 212.21(e)(2)—(9 points), and
Reg. 212.21(e)(3)—(2 points).

(Approved by the Office of Management and Budget under control number 1810-0541)
(Authority: 20 U.S.C. 2743, 2831)
[54 FR 22730, May 25, 1989]

Reg. 212.56 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in Reg.§ 212.21 and 212.55, the Secretary ensures that—

(1) Grants are made to projects that ensure coordination and cooperation between States (or areas of a State) in which participating children and parents reside during the year; and

(2) To the extent possible, grants are distributed equitably among the States in the three migrant streams, as defined in paragraph (c) of this section.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into three groups representing the three migrant streams; and

(2) First awards a grant to the applicant in each stream that is ranked the highest as a result of the process in Reg. 212.54, provided that there is an acceptable application from an SEA or consortium of SEAs in that stream.

(c) For the purposes of this section, the States comprising each stream are the following:

Eastern Stream—

Alabama
Connecticut
Delaware
Florida
New York
North Carolina
Pennsylvania
Puerto Rico
Georgia
Kentucky
Maine
Maryland
Rhode Island
South Carolina
Tennessee
Vermont
Massachusetts
Mississippi
New Hampshire
New Jersey
Virginia
West Virginia
District of Columbia

Central Stream—

Arkansas
Illinois
Indiana
Iowa
Kansas
Ohio
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Oklahoma
South Dakota
Texas
Wisconsin
Louisiana

Western Stream—

Alaska
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
Mariana Islands

(Authority: 20 U.S.C. 2743, 2831)
[54 FR 22730, May 25, 1989]

Reg. 212.57 What other provisions in this part apply?

(a) In addition to the provisions in this subpart, the following provisions in this part apply to the Migrant Education Even Start program:

(1) Reg. 212.3.

(2) Reg. 212.4.

(3) Reg. 212.5(a), except that the reference to section 1052(a) of the Act is read to be to section 1053(a) of the Act.

(4) Reg. 212.6.

(5) Reg. 212.25, except the references in paragraphs (c) and (d) to Reg. 212.21 and § 212.22(a) are read to refer to Reg. 212.5 and § 212.56 respectively.

(6) Reg. 212.26.

(b) In each place the term "LEA" appears in Reg. 212.4, Reg. 212.5(a), or § 212.26, the term is considered to mean "SEA."

(Authority: 20 U.S.C. 2743)
[54 FR 22730, May 25, 1989]

Reg. 212.58 May an SEA make a subgrant to an LEA or other operating agency?

Notwithstanding the prohibition of subgrants in 34 CFR 75.708(a), an SEA that receives a grant under the Migrant Education Even Start program may make a subgrant of funds to one or more LEAs or other operating agencies provided that program funds are used as the SEA's approved project application specifies.

(Authority: 20 U.S.C. 2743, 2831)
[54 FR 22730, May 25, 1989]

ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

(34 Code of Federal Regulations Part 300)

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(Authority: 20 U.S.C. 1411-1420, unless otherwise noted.)
[Source: 42 FR 42476, Aug. 23, 1977; 45 FR 77368, Nov. 21, 1980; 51 FR 19311, May 28, 1986.]

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

Reg. 300.1 Purpose.

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist States and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(20 U.S.C. 1401 Note)

Reg. 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State.* The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See Regs. 300.400-300.403)
(20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

Comment. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

Reg. 300.3 Regulations that apply to Assistance to States for Education of Handicapped Children.

(a) *Regulations.* The following regulations apply to this program of Assistance to States for Education of Handicapped Children.

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 300.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Apply for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))
[Amended at 45 FR 22531, April 3, 1980]

DEFINITIONS

Comment. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined:

Consent (Section 300.500 of Subpart E)
Destruction (Section 300.560 of Subpart E)
Direct services (Section 300.370(b)(1) of Subpart C)
Evaluation (Section 300.500 of Subpart E)
First priority children (Section 300.320(a) of Subpart C)
Independent educational evaluation (Section 300.503 of Subpart E)
Individualized education program (Section 300.340 of Subpart C)
Participating agency (Section 300.560 of Subpart E)
Personally identifiable (Section 300.500 of Subpart E)
Private school handicapped children (Section 300.450 of Subpart D)
Public expense (Section 300.503 of Subpart E)
Second priority children (Section 300.320(b) of Subpart C)

Special definition of "State" (Section 300.700 of Subpart G)
Support services (Section 300.370(b)(2) of Subpart C)

Reg. 300.4 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1401(18))

Reg. 300.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with Regs. 300.530-300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of Hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means

(i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or

(ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The terms means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educa-

tional performance. The term includes both partially seeing and blind children.

(20 U.S.C. 1401(1), (15))
[42 FR 42476, Aug. 23, 1977, as amended at 42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and further amended at 46 FR 3866, Jan. 16, 1981]

Reg. 300.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(20 U.S.C. 1417(b))

Reg. 300.7 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which:

(a) Is under the general supervision of a State educational agency;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to handicapped children within that State.

(20 U.S.C. 1401(22))

Reg. 300.8 Local educational agency.

(a) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(20 U.S.C. 1401 (8))
[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.9 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

The term "native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b-1(a)(2); 1401(21))

Comment. Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under Reg. 300.505(b)(2) and Reg. 300.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).

Reg. 300.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with Reg. 300.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

Reg. 300.11 Public Agency.

As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to handicapped children.

(20 U.S.C. 1412(2)(B); 1412(6); (1413(a)

Reg. 300.12 Qualified.

As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

(20 U.S.C. 1417(b))

Reg. 300.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conversation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools,

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

(20 U.S.C. 1401(17))

Comment. With respect to related services, the Senate Report states:

The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(Senate Report No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

Reg. 300.14 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401(16))

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401(16))

Comment. (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 300.5.) The definition of "related services" (section 300.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

Subpart B—State Annual Program Plans And Local Applications

ANNUAL PROGRAM PLANS—GENERAL

Reg. 300.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(20 U.S.C. 1232c(b), 1412, 1413)

Reg. 300.111 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(20 U.S.C. 1412, 1413, 1232c(b))

ANNUAL PROGRAM PLANS—CONTENTS

Reg. 300.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under Reg. 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under Reg. 300.127(a)(1) of this subpart; and

(4) Establishes timelines for implementing the policy, in accordance with Reg. 300.122.

(20 U.S.C. 1412(1), (2)(B), (6); 1413(a)(3))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.122 Timelines and ages for free appropriate public education.

(a) *General.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(20 U.S.C. 1412(2)(B))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.123 Full educational opportunity goal.

Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.

(20 U.S.C. 1412(2)(A))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.124 Full educational opportunity goal—data requirement.

Beginning with school year 1978-1979, each annual program plan must contain the following information:

(a) The estimated number of handicapped children who need special education and related services.

(b) For the current school year:

(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and

(2) The number of handicapped children:

(i) Who are receiving a free appropriate public education,

(ii) Who need, but are not receiving a free appropriate public education,

(iii) Who are enrolled in public and private institutions and are receiving a free appropriate public education, and

(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(d) A description of the basis used to determine the data required under this section.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category (except for children aged birth through two), and

(2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A))

Comment. In part B of the Act, the term "disability" is used interchangeably with "handicapping condition." For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in Reg. 300.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

States should note that data required under this section are not to be transmitted to the Commissioner in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.

[53 FR 49144, Dec. 6, 1988]

Reg. 300.125 Full educational opportunity goal—timetable.

(a) *General requirement.* Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) *Content of timetable.* (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.126 Full educational opportunity goal—facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) *Statistical description.* Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraph (b)(1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories.* The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale.* Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.127 Priorities.

(a) *General requirement.* Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under Regs. 300.320-300.324 of Subpart C.

(2) The State priorities meet the timelines under Reg. 300.122 of this subpart, and

(3) The State has made progress in meeting those timelines.

(b) *Child data.* (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in Reg. 300.321 of Subpart C:

(i) By disability category, and

(ii) By the age ranges in Reg. 300.124(e)(2) of this subpart.

(c) *Activities and resources.* Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.128 Identification, location, and evaluation of handicapped children.

(a) *General requirement.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the States uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C)

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements in Regs. 300.560-300.576.

[53 FR 49144, Dec 6, 1988]

Reg. 300.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Commissioner shall use the criteria in Regs. 300.560-300.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. The confidentiality regulations were published in the Federal Register in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94-142. Those regulations are incorporated in Regs. 300.560-300.576 of Subpart E.

[53 FR 49144, Dec. 6, 1988]

Reg. 300.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(20 U.S.C. 1412(4))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.131 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in Regs. 300.500-300.514 of Subpart E are met.

(20 U.S.C. 1412(5)(A))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in Regs. 300.550-300.556 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with Regs. 300.550-300.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(20 U.S.C. 1412(5)(B))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in Regs. 300.530-300.534 of Subpart E are met.

(20 U.S.C. 1412(5)(C))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.134 Responsibility of State educational agency for all educational programs

(a) Each annual program plan must include information which shows that the requirements in Reg. 300.600 of Subpart F are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.

(20 U.S.C. 1412(6))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.136 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency.

(20 U.S.C. 1412(6))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.137 Procedures for consultation

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(20 U.S.C. 1412(7)(A))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.138 Other Federal programs

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal programs, including Subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Vocational Education Act under which there is specific authority for assistance for the education of handicapped children, are used by the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a)(2))
[53 FR 49144, Dec. 6, 1988; 54 FR 18253, Apr. 27, 1989; 54 FR 27303, June 30, 1989]

Reg. 300.139 Comprehensive system of personnel development

Each annual program plan must include the material required under Regs. 300.380-300.387 of Subpart C.

(20 U.S.C. 1413(a)(3))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.140 Private schools

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1413(a)(4))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.141 Recovery of funds for misclassified children

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(20 U.S.C. 1413(a)(5))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.144 Hearing on application

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(20 U.S.C. 1413(a)(8))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.145 Prohibition of commingling

Each annual program plan must provide assurance satisfactory to the Commissioner that funds provided under Part B of the Act are not commingled with State funds.

(20 U.S.C. 1413(a)(9))

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required.
(See 34 CFR 76, Subpart F (Cash Depositories).)

Reg. 300.146 Annual evaluation

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a)(11))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.147 State advisory panel

Each annual program plan must provide that the requirements of Regs. 300.650-300.653 of Subpart F are met.

(20 U.S.C. 1413(a)(12))

Reg. 300.148 Policies and procedures for use of Part B funds

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(20 U.S.C. 1413(a)(1))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.149 Description of use of Part B funds

(a) *State allocation.* Each annual program plan must include the following information about the State's use of funds under Reg. 300.370 of Subpart C and Reg. 300.620 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application),

(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application,

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application, and

(4) A description of direct services the State educational agency will provide under Reg. 300.360 of Subpart C.

(20 U.S.C. 1232c(b)(1)(B)(ii))
[53 FR 49144, Dec. 6, 1988]

Reg. 300.150 State-level nonsupplanting.

Each program plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of State or local educational agencies—expended for special education and related services provided to handicapped children under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with Reg. 300.589.

(Authority: 20 U.S.C. 1413(a)(9))

Comment. This requirement is distinct from the supplanting provision already contained in these regulations at Reg. 300.230. Under this provision, the State must assure that Part B funds distributed to local educational agencies and intermediate educational units will be used to supplement and not supplant other Federal, State, and local funds (including funds not under the control of educational agencies) that would have been expended for special education and related services provided to handicapped children in the absence of the Part B funds. The portion of Part B funds that are not distributed to local educational agencies or intermediate educational units under the statutory formula (20 U.S.C. 1411(d)) are not subject to this supplanting provision. *See* 20 U.S.C. 1411(c)(3). States may not permit local educational agencies or intermediate educational units to use Part B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency

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pursuant to policy or practice but for the fact that these services are now included in handicapped children's individualized education programs.

(H.R. Rep. No. 860, 99th Cong., 21-22 (1986))

[54 FR 18253, Apr. 27, 1989; 54 FR 27161, June 28, 1989]

Reg. 300.151 Additional information if the State educational agency provides direct services.

If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under Regs. 300.226-300.228, 300-231, and 300.235.

(20 U.S.C. 1413(b))

Reg. 300.152 Interagency agreements

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The State educational agency; and

(2) All other State and local agencies that provide or pay for services required under this part for handicapped children.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for services required under this part for handicapped children; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing handicapped children with free appropriate public education;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1413(a)(13))
[54 FR 18253, Apr. 27, 1989; 54 FR 50476, Dec. 6, 1989]

Reg.300.153 Personnel standards

(a) As used in this part:

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with handicaps who are served by State, local, and private-agencies (*see* Reg. 300.2);

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides special education and related services to handicapped children under this part;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the State educational agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with handicaps must be considered.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1413(a)(14))

Comment: The regulations require that the State use its own existing highest requirements to determine the standard appropriate to personnel who provide special education and related services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part. In some instances, States will be required to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the State educational agency that are based on requirements for practice in a specific professional or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under this part to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special educational and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

[54 FR 18253, Apr. 27, 1989; 54 FR 50476, Dec. 6, 1989]

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

Reg. 300.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(20 U.S.C. 1414(a))

Reg. 300.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children.

(20 U.S.C. 1414(a)(1), (a)(2)(B)(ii))

Reg. 300.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under Reg. 300.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service.

(20 U.S.C. 1401(20); 1414(a)(1))
[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Comment. The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to other requirements of Part B (priorities, etc.). In the "Comment" under section 300.184, there is an example of how the minimum amount is computed.

Reg. 300.184 Excess costs—computation of minimum amount.

The minimum average amount a local educational agency must spend under Reg. 300.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act the Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

(i) Programs for handicapped children,

(ii) Programs to meet the special education needs of educationally deprived children, and

(iii) Programs of bilingual education for children with limited English-speaking ability.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a)(1))

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under Reg. 300.183. This example follows the formula in Reg. 300.184. Under the Statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1) From local tax funds	$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures;

	$10,500,000
	—500,000
Total expenditures for elementary school students (less capital outlay and debt service)	10,000,000

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special education needs of educationally deprived children; and

(3) Programs of bilingual educational for children with limited English-speaking ability.

These are funds which the local educational agency actually spent, not funds received last year but carried over for the current school year.

Example: The local educational agency spent the following amounts for elementary school students last year:

(1) From funds under Title I of the Elementary and Secondary Education Act of 1965	$300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under Part B	200,000
(4) From State funds for the education of handicapped children	500,000
(5) From a locally-funded program for handicapped children	$250,000
(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000
Total	1,600,000

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: handicapped children, educationally deprived children, and bilingual education for children with limited English-Speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed above:

$10,000,000
—1,600,000

8,400,000

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

Example. Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$8,400,000/7,000 students equals $1,200/student.

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

Reg. 300.185 Computation of excess costs—consolidated application.

The minimum average amount under Reg. 300.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under Reg. 300.184 in those agencies for elementary or secondary school students, as the case may be.

(20 U.S.C. 1414(a)(1))

Reg. 300.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for nonhandicapped children in that age range. However, the local educational agency must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(20 U.S.C. 1402(20); 1414(a)(1))

Reg. 300.190 Consolidated application

(a) [Reserved]

(b) *Required applications.* A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (Reg. 300.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) *Size and scope of program.* The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(20 U.S.C. 1414(c)(1))
[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.192 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with Section 612(1)-(7) and Section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(c)(2)(B))

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(20 U.S.C. 1414(c)(2)(C))

Reg. 300.193 State educational agency approval; disapproval.

(a) - (b) [Reserved]

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under Regs. 300.506-300.513 of Subpart E which is adverse to the local educational agency involved in the decision.

(20 U.S.C. 1414(b)(3))
[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State Educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under Reg. 300.180;

(3) Or both.

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in Reg. 300.592.

(20 U.S.C. 1414(b)(2))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

Reg. 300.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A))

Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in Regs. 300.560-300.576 of Subpart E.

Reg. 300.221 Confidentiality of personally identifiable information

Each application must include policies and procedures which insure that the criteria in Regs. 300.560-300.574 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B))

Reg. 300.222 Full educational opportunity goal: timetable.

Each application must:

(a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1)(C), (D))

Reg. 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in Reg. 300.222.

(20 U.S.C. 1414(a)(1)(E))

Reg. 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under Reg. 300.140.

(20 U.S.C. 1414(a)(1)(C)(i))

Reg. 300.225 Priorities.

Each application must include priorities which meet the requirements of Regs. 300.320-300.324.

(20 U.S.C. 1414(a)(1)(C)(ii))

Reg. 300.226 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under Reg. 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(20 U.S.C. 1414(a)(1)(C)(iii))

Reg. 300.227 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with Regs. 300.550-300.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(20 U.S.C. 1414(a)(1)(C)(iv))

Reg. 300.229 Excess cost.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed under Reg. 300.184 and which are directly attributable to the education of handicapped children.

(20 U.S.C. 1414(a)(2)(B))

Reg. 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

(20 U.S.C. 1414(a)(2)(B))

Comment. Under statutes such as Title 1 of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Commissioner looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977, it must budget at least $100,000 in FY 1978, unless one of the conditions in Reg. 300.230(b)(1) applies.

Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.

Reg. 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section.

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(20 U.S.C. 1414(a)(2)(C))

Comment. Under the "comperability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under Regs. 300.320-300.324.

Reg. 300.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1414(a)(5))

Reg. 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of Reg. 300.500-300.514 of Subpart E.

(20 U.S.C. 1414(a)(7))

Reg. 300.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a))

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Reg. 300.240 Other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under Regs. 300.120-300.151.

(20 U.S.C. 1414(a)(6))

APPLICATION FROM SECRETARY OF INTERIOR

Reg. 300.260 Submission of annual application; approval.

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements in section 612(1), 612(2)(A), 612(2)(C)-(E), 612(4), 612(5), 612(6), and 612(7) of the Act;

(2) Meets the requirements in section 613(a), 613(b), 613(c), and 613(e) of the Act;

(3) Meets the requirements of section 614(a) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)(1)-(a)(3) of this section; and

(5) Includes an assurance that there have been public hearings on the application, adequate notice of the public hearings, and an opportunity for members of tribes, tribal governing bodies, and designated local school boards to comment on the application before the adoption of the policies, programs, and procedures required under sections 612, 613, and 614(a) of the Act.

(b) Section 300.580-300.586 apply to grants available to the Secretary of the Interior under this part.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1411(f))
[54 FR 18254, Apr. 27, 1989; 54 FR 50476, Dec. 6, 1989]

Reg. 300.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with Regs. 300.280-300.284.

(20 U.S.C. 1411(f))

Reg. 300.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $350,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of the Interior in any fiscal year must be used in accordance with the priorities under Regs. 300.320-300.324 of Subpart C.

(20 U.S.C. 1411(f))
[42 FR 42476, Aug. 23, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 51 FR 19311, May 28, 1986]

Reg. 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2))

PUBLIC PARTICIPATION

Reg. 300.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(20 U.S.C. 1412(7))

Reg. 300.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act.

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Commissioner for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7))

Reg. 300.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under Reg. 300.281.

(20 U.S.C. 1412(7))

Reg. 300.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7))

Reg. 300.284 Publication and availability of approved plan.

After the Commissioner approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7))

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

Reg. 300.300 Timelines for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Age ranges 3-5 and 18-21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to nonhandicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all its handicapped children of the same age who have that disability. This provision does not apply to children aged three through five for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nonhandicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under Reg. 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under Reg. 300.321.

2. In order to be in compliance with Reg. 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Regs. 300.530-300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under Reg. 300.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under Regs. 300.320-300.324.

[54 FR 18254, Apr. 27, 1989]

Reg. 300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

(20 U.S.C. 1401(18); 1412(2)(B))

Reg. 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

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Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

Reg. 300.303 Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

(20 U.S.C. 1412(2)(B))

Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

> In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(House Report No. 95-381, p. 67 (1977))

Reg. 300.304 Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under Regs. 300.320-300.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under Regs. 300.320-300.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142:

> The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.
>
> Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in Federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Senate Report No. 94-168, p. 13 (1975))

Reg. 300.305 Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to nonhandicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. The above list of program options is not exhaustive, and could include any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under Regs. 300.320-300.324.

Reg. 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Reg. 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) *Regular physical education.* Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to nonhandicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6))

Comment. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all nonhandi-

capped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

...

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(House Report No. 94-332, p. 9 (1975))

PRIORITIES IN THE USE OF PART B FUNDS

Reg. 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of Regs. 300.321-300.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under Reg. 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

(20 U.S.C. 1412(3))

Comment. After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving Part B funds for fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.

NOTE—The term "free appropriate public education," as defined in Reg. 300.4 of Subpart A, means "special education and related services which...are provided in conformity with an individualized education program...."

New "First priority children" will continue to be found by the State after September 1, 1978 through ongoing efforts to identify, locate, and evaluate all handicapped children.

Reg. 300.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under Reg. 300.620.

(20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

(c) State and local educational agencies may not use funds under Part B of the Act for preservice training.

(20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975))

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, Part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under § 300.304, including employing additional personnel and providing in-service training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of Part B.

Reg. 300.322 First priority children—school year 1977-1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.

(20 U.S.C. 1411(b), (c))

Comment. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an in-service training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

Reg. 300.323 Services to other children.

If a State or a loca educational agency is providing free appropriate public education to all its first priority children, that State or agency may use funds provided under Part B of the Act:

(a) To provide free appropriate pubilc education to handicapped children who are not receiving any education and who are in the age groups not covered under Reg. 300.300 in that State; or

(b) To provide free appropriate public education to second priority children; or

(c) Both.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

Reg. 300.324 Application of local educational agency to use funds for the second priorty.

A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agncy has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1411(b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii)

INDIVIDUALIZED EDUCATION PROGRAMS

Reg. 300.340 Definition.

As used in this aprt, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with Regs. 300.341-300.349.

(20 U.S.C. 1401(19))

Reg. 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412(4), (6); 1413(a)(4)

Comment: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which upivide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to privide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

Reg. 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under Reg. 300.343.

(20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Publ. L. 94-142. Sec. 8(c) (1975))

Comment: Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under Reg. 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

Reg. 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this section, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in Reg. 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in Reg. 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

Reg. 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to Reg. 300.345.

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(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting;or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19) 1412(2)(B), (4), (6); 1414(a)(5))

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized educational program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special educational teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

Reg. 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parent that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19): 1412(2)(B), (4), (6); 1414(a)(5))

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

Reg. 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5); Senate Report No. 94-168, p. 11 (1975))

Reg. 300.347 Private school placements.

(a) *Developing individualized education program.* (1) Before a public agency placed a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with Reg. 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized education program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with Reg. 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A))

Reg. 300.349 Individualized education program—Accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objective1063d goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

Reg. 300.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of Regs. 300.220-300.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under Regs. 300.182-300.186 do not apply to the State educational agency.

(20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Comment. Section 300.360 is a combination of three provisions in the statute (Section 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met...." Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

Reg. 300.361 Nature and location of services.

The State educational agency may provide special education and related services under Reg. 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provision in Regs. 300.550-300.556 of Subpart E).

(20 U.S.C. 1414(d))

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Reg. 300.370 Use of State agency allocations

(a) The State may use the portion of its allocation that it does not use for administration under Regs. 330.620-300.621:

(1) For support services and direct services in accordance with the priority requirements under Regs. 300.320-300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contact, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under Regs. 300.380-300.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(20 U.S.C. 1411(b)(2), (c)(2))
[54 FR 18254, Apr. 27, 1989]

Reg. 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following year, the funds that a State uses for direct and support services under Reg. 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under Reg. 300.360.

(20 U.S.C. 1411(c)(2)(B), (c)(4)(B))

Comment. The requirement in Reg. 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

Reg. 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under Reg. 300.706(a) of Subpart G for administration, direct services, or support services.

(20 U.S.C. 1411(c)(3))

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Reg. 300.380 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in Reg. 300.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(20 U.S.C. 1413(a)(3))

Reg. 300.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the state which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under Reg. 300.383.

(20 U.S.C. 1412(7)(A); 1413(a)(3))

Reg. 300.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of Statewide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologist, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) Specify: (i) The funding sources to be used, and (ii) The time frame for providing it; and

(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(20 U.S.C. 1413(a)(3))

Reg. 300.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and in-service education needs;

(b) Describe the results of the needs assessment under Reg. 300.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target population for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).

(20 U.S.C. 1413(a)(3))

Reg. 300.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(20 U.S.C. 1413(a)(3))

Reg. 300.385 Adoption of educational practices.

(a) Each annual program must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3))

Reg. 300.387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3)

Subpart D—Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

Reg. 300.400 Applicability of Regs. 300.401-300.403.

Regs. 300.401-300.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized educational program which meets the requirements under Regs. 300.340-300.349 of Subpart C;

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.402 Implementation by State educational agency.

In implementing Reg. 300.401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires:

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Regs. 300.450-300.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Regs. 300.500-300.514 of Subpart E.

(20 U.S.C. 1412(2)(B); 1415)

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

Reg. 300.450. Definition of "private school handicapped children."

As used in this part, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under Regs. 300.400-300.402.

(20 U.S.C. 1413(a)(4)(A))
[49 FR 48526, Dec. 12, 1984]

Reg. 300.451 State educational agency responsibility.

The State educational agency shall insure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The other requirements in 34 CFR 76.651-76.663 of EDGAR are met.

(20 U.S.C. 1413(a)(4)(A))
[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6))
[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

PROCEDURES FOR BY-PASS

Reg. 300.480 By-pass—General

(a) The Secretary implements a by-pass if a State educational agency is, and was on December 2, 1983, prohibited by law from providing for the participation of private school handicapped children in the program assisted or carried out under this part, as required by Section 613(a)(4)(A) of the Act and by Regs. 300.451-300.452.

(b) The Secretary waives the requirement of Section 613(a)(4)(A) of the Act and of Regs. 300.451-300.452 if the Secretary implements a by-pass.

(20 U.S.C. 1413(d)(1))
[49 FR 48526, Dec. 12, 1984]

Reg. 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including State educational agency officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law which results in the need for a by-pass;

(2) The scope and nature of the services required by private school handicapped children in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school handicapped children receive services consistent with the requirements of Section 613(a)(4)(A) of the Act, Regs. 300.451-300.452, and 34 CFR 76.651-76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school handicapped children in the State in a manner consistent with the requirements of Section 613(a)(4)(A) of the Act and Regs. 300.451-300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year in which a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount, which may not exceed the amount per child provided by the Secretary under this part for all handicapped children in the State for the preceding fiscal year; by

(2) The number of private school handicapped children (as defined by Regs. 300.5(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those handicapped children.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(20 U.S.C. 1413(d)(2))
[49 FR 48526, Dec. 12, 1984]

DUE PROCESS PROCEDURES

Reg. 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected State educational agency with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the State educational agency to respond;

(2) Advises the State educational agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the State educational agency by certified mail with return receipt requested.

(20 U.S.C. 1413(d)(3)(A))
[49 FR 48526, Dec. 12, 1984]

Reg. 300.483 Request to show cause.

A State educational agency seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(20 U.S.C. 1413(d)(3)(A))

Reg. 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the State educational agency and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including procedures such as those established in 34 CFR 78.61(a), *Authority and responsibilities of Panels*.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(20 U.S.C. 1413(d)(3)(A))
[49 FR 48526, Dec. 12, 1984]

Reg. 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision which includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail withreturn receipt requested.

(b) Each party may submit comments andrecommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the State educational agency of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(20 U.S.C. 1413(d)(3)(A))
[49 FR 48527, Dec. 12, 1984]

Reg. 300.486 Judicial review.

If dissatisfied with the Secretary's final action, the State educational agency may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in Section 613(d)(3)(B)-(D) of the Act.

(20 U.S.C. 1413(d)(3)(B)-(D))
[49 FR 48527, Dec. 12, 1984]

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

Reg. 300.500 Definitions of "consent," "evaluation," and "personally identifiable."

As used in this part: "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with Regs. 300.530-300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c))

Reg. 300.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of Regs. 300.500-300.514.

(20 U.S.C. 1415(a))

Reg. 300.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in Regs. 300.562-300.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A))

Reg. 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with Reg. 300.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under Reg. 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

Reg. 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under Reg. 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Regs. 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Regs. 300.510-300.513.

(20 U.S.C. 1415(b)(1)(C), (D))

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Reg. 300.505 Content of notice.

(a) The notice under Reg. 300.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c)(1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

Reg. 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Reg. 300.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1415(b)(2))

Comment. Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children.

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Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

Reg. 300.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1415(b)(2))

Reg. 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(20 U.S.C. 1415(d))

Reg. 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under Reg. 300.510 or Reg. 300.511.

Reg. 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Reg. 300.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under Reg. 300.512.

(20 U.S.C. 1415(c), (d); H.Rep. No. 94-664, at p. 49 (1975))

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Reg. 300.508, relating to hearings, also apply.

Reg. 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Reg. 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under Reg. 300.510 has the right to bring a civil action under Section 615(e)(2) of the Act.

(20 U.S.C. 1415)

Reg. 300.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415)

Reg. 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3))

Comment. Reg. 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

Reg. 300.514 Surrogate parents.

(a) *General.* Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in Reg. 300.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.*

(1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B))

PROTECTION IN EVALUATION PROCEDURES

Reg. 300.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C))

Reg. 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special educational program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Reg. 300.532.

(20 U.S.C. 1412(5)(C))

Reg. 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so:

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producers;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C))

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (*e.g.*, psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

Reg. 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the valuation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550-300.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1412(5)(C); 1414(a)(5))

Comment. Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

Reg. 300.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with Regs. 300.340-300.349 of Subpart C, and

(b) That an evaluation of the child, based on procedures which meet the requirements under Reg. 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(20 U.S.C. 1412(5)(c))

ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

Reg. 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of Reg. 300.532, each public agency shall include on the multidisciplinary evaluation team:

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examination of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(20 U.S.C. 1411 note.)
[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;
(ii) Listening comprehension;
(iii) Written expression;
(iv) Basic reading skill;
(v) Reading comprehension;
(vi) Mathematics calculation; or
(vii) Mathematic reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;
(2) Mental retardation;
(3) Emotional disturbance; or
(4) Environmental, cultural or economic disadvantage.

(20 U.S.C. 1411 note.)
[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(20 U.S.C. 1411 note.)
[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(20 U.S.C. 1411 note.)
[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

LEAST RESTRICTIVE ENVIRONMENT

Reg. 300.550 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.550-300.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

Reg. 300.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under Reg. 300.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(20 U.S.C. 1412(5)(B))

Reg. 300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(1) Is determined at least annually,

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home;

(b) The various alternative placements included under Reg. 300.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B))

Comment. Reg. 300.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The requirements of Reg. 300.552, as well as the other requirements of Regs. 300.550-300.556, apply to all preschool handicapped children who are entitled to receive a free appropriate public education. Public agencies that provide preschool programs for nonhandicapped children must ensure that the requirements of Reg. 300.552(c) are met. Public agencies that do not operate programs for nonhandicapped preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the least restrictive environment embodied in Regs. 300.550-300.556. For these public agencies, some alternative methods for meeting the requirements of Regs. 300.550-300.556 include:

(1) Providing opportunities for the participation (even part-time) of preschool handicapped children in other preschool programs operated by public agencies (such as Head Start);

(2) Placing handicapped children in private school programs for nonhandicapped preschool children or private school preschool programs that integrate handicapped and nonhandicapped children; and

(3) Locating classes for handicapped preschool children in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the least restrictive environment in which the unique needs of that child can be met, based upon the child's individualized education program, and meets all of the other requirements of Regs. 300.340-300.349 and Regs. 300.550-300.556.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104—Appendix, Paragraph 24) includes several points

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regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "...it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her need...."

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subject.

[54 FR 18254, Apr. 27, 1989]

Reg. 300.553 Non-academic settings.

In providing or arranging for the provision of non-academic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with non-handicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(20 U.S.C. 1412(5)(B))

Comment. Reg. 300.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided non-academic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR Part 104—Appendix, Paragraph 24.)

Reg. 300.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that Reg. 300.550 is effectively implemented.

(20 U.S.C. 1412(5)(B))

Comment. Under Section 612(5)(B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

Reg. 300.555 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies:

(a) Are fully informed about their responsibilities for implementing Reg. 300.550, and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(20 U.S.C. 1412(5)(B))

Reg. 300.556 Monitoring activities.

(a) The State educational agency shall carry out activities to insure that Reg. 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with Reg. 300.550 of this subpart, the State educational agency:

(1) Shall review the public agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

(20 U.S.C. 1412(5)(B))

CONFIDENTIALITY OF INFORMATION

Reg. 300.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under Reg. 300.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information.

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under Section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(20 U.S.C. 14312(2)(D); 1417(c))

Reg. 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Reg. 300.568.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.570 Hearing procedures.

A hearing held under Reg. 300.568 of this subpart must be conducted according to the procedures under Reg. 99.22 of this title.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Reg. 300.129 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.573 Destruction of information.

(a) the public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. Under Reg. 300.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b).

Reg. 300.574 Child's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.44(a)), the rights of parents regarding education records are transferred to the student at age 18.

Reg. 300.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg. 300.576 Office of Education.

If the Office of Education or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the commissioner shall apply the requirements of 5 U.S.C. Section 552a.(b)(1)-(2), (4)-(11); (c); (d); (e)(1); (2), (3)(A), (B), and (D), (5-10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(20 U.S.C. 1412(2)(D); 1417(c))

OFFICE OF EDUCATION PROCEDURES

Reg. 300.580 [Removed and reserved]

Reg. 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the State educational agency written notice and an opportunity for a hearing.

(20 U.S.C. 1413(c))
[51 FR 17905, May 15, 1986]

Reg. 300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the State educational agency that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the State educational agency by certified mail with return receipt requested.

(20 U.S.C. 1413(c))
[51 FR 17905, May 15, 1986]

Reg. 300.583 Hearing Official or Panel.

(a) If the State educational agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of the program under this part, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(c) If the State has an appeal pending with the Education Appeal Board on a matter arising out of the same State plan, or on the same issue arising from a prior plan, the State may contest the disapproval of its plan before the Education Appeal Board in accordance with 34 CFR Part 78.

(20 U.S.C. 1413(c))
[51 FR 17905, May 15, 1986]

Reg. 300.584 Hearing procedures.

(a) As used in Regs. 300.581-300.586 the term "party" or "parties" means the following:

(1) A State educational agency that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case who has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held;

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(20 U.S.C. 1413(c))
[51 FR 17905, May 15, 1986]

Reg. 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision which addresses each of the points in the notice sent by the Secretary to the State educational agency under Reg. 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

[51 FR 17905, May 15, 1986]

Reg. 300.586 Judicial Review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(20 U.S.C. 1416(b)(1))
[51 FR 17905, May 15, 1986]

Regs. 300.587-300.588 [Removed]

Reg. 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local educational agencies must insure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to handicapped children under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to local educational agencies *(See* Reg. 300.372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under Sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner the provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Commissioner considers the information which the State provides under paragraph (d) and (e) of this section, along with any additional information he may request or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(20 U.S.C. 1411(c)(3); 1413(a)(9)(B)
[42 FR 42476, Aug. 23, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 51 FR 17906, May 15, 1986; 54 FR 18259, Apr. 27, 1989; 54 FR 27303, June 28, 1989]

Subpart F—State Administration

GENERAL

Reg. 300.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring:

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency;

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education to handicapped children in the State.

(20 U.S.C. 1412(6))

Comment. The requirement in Reg. 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on P.L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency....

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of the one agency. (Senate Report No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs.

[54 FR 18255, Apr. 27, 1989]

Reg. 300.601 Relation of Part B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to handicapped children, or to alter a handicapped child's eligibility, under Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, to receive services that are also part of a free appropriate public education.

(Authority: 20 U.S.C. 1413(e))
[54 FR 18255, Apr. 27, 1989]

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USE OF FUNDS

Reg. 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $350,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than twenty-five percent of the State's total allotment for the fiscal year under Part B of the Act.

(20 U.S.C. 1411(b), (c))

Reg. 300.621 Allowable costs.

(a) The State educational agency may use funds under Reg. 300.620 of this Subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for handicapped children; and

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under Reg.300.620 in accordance with Reg. 300.370 of Subpart C.

(20 U.S.C. 1411(b), (c))

STATE ADVISORY PANEL

Reg. 300.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in Reg. 300.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(20 U.S.C. 1413(a)(12))

Reg. 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) State and local educational officials.

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(20 U.S.C. 1413(a)(12))

Comment. The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives input from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

Reg. 300.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under Section 618.

(20 U.S.C. 1413(a)(12))

Reg. 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Reg. 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under Reg. 300.620 for this purpose.

(20 U.S.C. 1413(a)(12))

Subpart G—Allocation Of Funds; Reports

ALLOCATIONS

Reg. 300.700 Special definition of the term State.

For the purposes of Regs. 300.701, 300.702, and 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1411(a)(2))

Reg. 300.701 State entitlement; formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged six through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority 20 U.S.C. 1411(a)(1))

(b) [*Reserved*]

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4))
[54 FR 18255, Apr. 27, 1989]

Reg. 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under Reg. 300.701—

(1) If a State serves all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged three through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged three through 17 in the State;

(2) If a State does not serve all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged five through 17 to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(3) The Secretary does not count handicapped children who are counted under Subpart 2 of Part D of Chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged three through 17 and five through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))
[42 FR 42476, Aug. 23, 1977, as amended at 42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980; 54 FR 18255, Apr. 27, 1989; 54 FR 27303, June 28, 1989]

Reg. 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under Section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1))

(b) *Reporting dates for local educational agencies and reallocations.*

(1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full and total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the state the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other

local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in Reg. 300.707, which the State educational agency determined will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411(g)(2))

Reg. 300.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. 1411(a)(1))

Reg. 300.705 Allocation for State in which bypass is implemented for private school handicapped children.

In determining the allocation under Regs. 300.700-300.703 of a State in which the Secretary will implement a by-pass for private school handicapped children under Regs. 300.451-300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school handicapped children (as defined in Regs. 300.5(a) and 300.450 in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school handicapped children who received special education and related services under the by-pass in the preceding year.

(20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))
[49 FR 48256, Dec. 12, 1984]

Reg. 300.706 Within-State distribution; fiscal year 1979 and after.

Of the funds received under Reg. 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979;

(a) 25 percent may be used by the State in accordance with Reg. 300.620 of Subpart F and Reg. 300.370 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with Reg. 300.707.

(20 U.S.C. 1411(c)(1))

Reg. 300.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three though 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d))

Reg. 300.708 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under Reg. 300.707, to other local educational agencies within the State which are not adequately providing special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(20 U.S.C. 1414(e))

Reg. 300.709 Payments to Secretary of Interior.

(a) The Commissioner is authorized to make payments to the Secretary of the interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year is 1.25 percent of the aggregate amounts available to all States for that fiscal year under this part.

(Authority: 20 U.S.C. 1411(f)(1))
[54 FR 18255, Apr. 27, 1989]

Reg. 300.710 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(20 U.S.C. 1411(e))

REPORTS

Reg. 300.750 Annual report of children served—report requirement.

(a) The State educational agency shall report to the Commissioner no later than February 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services.

(b) The State educational agency shall submit the report on forms provided by the Commissioner.

(20 U.S.C. 1411(a)(3))

Comment: It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while Section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged three through 17 (in States that serve all handicapped children aged three through five) or five through 17 (in States that do not serve all handicapped children aged three through five), a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make a free appropriate public education available to all of those handicapped children.

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 7551, Feb. 4, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980; 54 FR 18255, Apr. 27, 1989]

Reg. 300.751 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on December 1 of that school year;

(2) The number of handicapped children aged three through five who are receiving a free appropriate public education;

(3) The number of those handicapped children aged six through 21 within each disability category, as defined in the definition of "handicapped children" in Reg. 300.5 of Subpart A; and

(4) The number of those handicapped children aged three through 21 for each year of age (three, four, five, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The State educational agency may not report a child aged six through 21 under more than one disability category.

(d) If a handicapped child aged six through 21 has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 7551, Feb. 4, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980; 49 FR 48525, Dec. 12, 1984; 54 FR 18255, Apr. 27, 1989; 54 FR 27303, June 28, 1989]

Reg. 300.752 Annual report of children served—certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3); 1417(b))

Reg. 300.753 Annual report of children served—criteria for counting children.

(a) The State educational agency may include handicapped children in this report who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefiting from special education;

(4) Are counted by a State agency under Subpart 2 of part D of Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, as amended; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under Reg. 300.186(b) of Subpart B.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Office of Education expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech therapy is the only special education required by the child. For example the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in Section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should

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understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

[54 FR 18256, Apr. 27, 1989; 54 fr 27303, June 28, 1989]

Reg. 300.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with Reg. 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Commissioner to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. States should note that the data required in the annual report of children served are not to be transmitted to the Commissioner in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

[Appendix A, Analysis of Final Regulation, was removed from the Code of Federal Regulations in 43 FR 57255, Dec. 7, 1978.]

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APPENDIX A—[omitted]

APPENDIX B—INDEX TO PART 300

ADMINISTRATION

See: Monitoring.
Annual program plan requirements—Regs. 300.112; 300.134; 300.138; 300.141; 300.142; 300.145.
Certification of State authority—Reg. 300.112.
Direct Service by State educational agency—Reg. 300.360.
Local application requirements—Regs. 300.228; 300.236; 300.240.
Local education agency definition—Reg. 300.8.
State administration—Subpart F.

ADVISORY PANEL (STATE)

Annual program plan requirement—Reg. 300.147.
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    Formula—Regs. 300.705-300.707.
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    Hold harmless—Reg. 300.704.
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    From the local agency—Reg. 300.194.
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Certifications—Reg. 300.112.
Condition of assistance to State—Reg. 300.110.
Contents—Regs. 300.111; 300.112; 300.120-300.151.
Effective period—Reg. 300.114.
General requirements—Regs. 300.110-300.114.
Public participation—See: Public Participation.
Submission by State—Reg. 300.110.

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Second priority children—amendment of application—Reg. 300.324.
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Condition of assistance to local agency—Reg. 300.180.
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  Information on achievement—Reg. 300.232.
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Local application requirement—Reg. 300.227.
Nature and location of State services—Reg. 300.361.
Nonacademic services and settings—Regs. 300.306; 300.553.
Physical education—Reg. 300.307.
Placement decisions—Regs. 300.513; 300.533.
Program options—Reg. 300.305.

MATCHING—REG. 300.371

MONITORING

Annual program plan requirements—Regs. 300.128(b)(5); 300.130(b)(2); 300.135.
Auditing count of children served—Reg. 300.754.
Confidentiality of information—Reg. 300.575.
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Individualized education programs—Reg. 300.130(b)(2).
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Evaluation materials and procedures—Reg. 300.530.
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Included in special education—Reg. 300.14.
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  Least Restrictive Environment.
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See: Evaluation.
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Annual program plan requirement—Reg. 300.127.
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  First priority children—Reg. 300.320(a).
  Second priority children—Reg. 300.320(b).
General requirements—Regs. 300.320-300.324.
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State direct and support services—Reg. 300.370.

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Cost of residential placement—Reg. 300.302.
Handicapped children placed or referred by public agencies—Regs. 300.400-300.403.
Handicapped children not placed or referred by public agencies—Regs. 300.450-300.460.
Individualized education program—Regs. 300.347-300.348.
Least restrictive environment—Reg. 300.554.
Part B applicability to private schools—Reg. 300.2.
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PROCEDURAL SAFEGUARDS

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  Consent.
  Hearings.
  Notice.
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Annual program plan requirements—Regs. 300.131; 300.136.
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See: Hearings.

Annual program plan requirements—Regs. 300.120; 300.137; 300.280-300.284.
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Secretary of Interior application—Reg. 300.261.
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RECORDS

See: Confidentiality of Information.
Annual program plan requirement—Reg. 300.143.
Comparable services—Reg. 300.231.
Count of children served—Reg. 300.754.
Excess costs—Reg. 300.183.
Individualized education programs—Reg. 300.130.
Local application requirement—Reg. 300.233.
Parents may examine—Regs. 300.502; 300.562.
Parents not participating in meetings—Reg. 300.345.

RELATED SERVICES

See: Free Appropriate Public Education.
Individualized Education Program.
Defined—Reg. 300.13.

REPORTS

Annual report of children served—Regs. 300.750-300.754.
Local application requirements—Regs. 300.232; 300.233.
State advisory panel—Reg. 300.652.

SPECIAL EDUCATION

See: Free Appropriate Public Education.
Individualized Education Program.
Defined—Reg. 300.14.

STATE ADVISORY PANEL

Annual program plan requirement—Reg. 300.147.
General requirements—Regs. 300.650-300.653.

STATE DIRECT AND SUPPORT SERVICES

Annual program plan requirement—Reg. 300.51.
General requirements—Regs. 300.360-300.372.

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Applicability to State educational agency—Reg. 300.372.
Local application requirement—Reg. 300.230.
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SURROGATE PARENTS

Definition of parent—Reg. 300.10.
Duty of public agency to assign—Reg. 300.514.
Responsibilities—Reg. 300.514.
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TESTING

See: Evaluation.

TIME LIMITS AND TIMETABLES

Annual program plan effective period—Reg. 300.114.
Evaluation of educational programs—Reg. 300.146.
Free appropriate public education—Regs. 300.122; 300.300.
Full educational opportunity goal—Regs. 300.125; 300.222.
Hearing decisions—Regs. 300.512; 300.583.
Individualized education programs—Regs. 300.342; 300.343.
Public participation in the annual program plan—Regs. 300.280-300.284.
Reevaluation—Reg. 300.534.
Report of children served—Regs. 300.750-300.754.
State monitoring of public agencies—Reg. 300.601.
State review of hearing decision—Reg. 300.512.

TRAINING

See: Personnel Development.

USE OF PART B FUNDS

Allocation formulas:
  Consolidated applications—Regs. 300.190-300.191.
  Entitlements—Regs. 300.700-300.710.
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State and local educational agencies:
  Free appropriate public education—Regs. 300.301-300.302.
  Full educational opportunity goal—Reg. 300.304(b).
  Priorities—Regs. 300.320-300.324.
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State educational agencies:
  Allowable costs—Reg. 300.621.
  Federal funds for State administration—Reg. 300.620.
  Matching—Reg. 300.371.
  State advisory panel—Reg. 300.652.
  Use of local allocation for direct services—Regs. 300.360-300.361.
  Use of State educational agency allocation for direct and support services—Reg. 300.370.
Supplanting—Regs. 300.230; 300.372; 300.589.
Training—See: Personnel Development.

APPENDIX C—NOTICE OF INTERPRETATION

I. Purpose of the IEP
II. IEP Requirements

Reg. 300.340 Definition

Reg. 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

Reg. 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean

4. How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?

5. For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

Reg. 300.343 Meetings

7. What is the purpose of the 30 day timeline in Reg. 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

Reg. 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the "representative of the public agency" at an IEP meeting?

14. Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary handicap and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a handicapped child attend an IEP meeting?

22. Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of a handicapped child's IEP?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

Reg. 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

Reg. 300.346 Content of the individualized education program

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term objectives)

37. Why are goals and objectives required in the IEP?
38. What are "annual goals" in an IEP?
39. What are "short term instructional objectives" in an IEP?
40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?
41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?
42. When must IEP objectives be written—before placement or after placement?
43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?
45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?
46. Must the public agency itself directly provide the services set out in the IEP?
47. Does the IEP include only special education and related services or does it describe the total education of the child?
48. If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?
49. When must physical education (PE) be described or referred to in an IEP?
50. If a handicapped child is to receive vocational education, must it be described or referred to in the student's IEP?
51. Must the IEP specify the amount of services or may it simply list the services to be provided?
52. Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?
54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?
56. Is there a prescribed format or length for an IEP?
57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?
58. What provisions on confidentiality of information apply to IEPs?

Reg. 300.347 Private school placements

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

Reg. 300.348 Handicapped children in parochial or other private schools

Reg. 300.349 Individualized education programs—accountability

60. Is the IEP a performance contract?

AUTHORITY: Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411-1420), unless otherwise noted.

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

Interpretation of Requirements Under Part B
of the Education of the Handicapped Act,
As Amended by Pub. L. 94-142

I. Purpose of the IEP

There are two main parts of the IEP requirements, as described in the Act and regulations: (1) The IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note: The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. See Reg. 300.349, *Individualized education program—accountability.*

II. IEP Requirements

This part (1) repeats the IEP requirements in Regs. 300.340-300.349 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

1. *Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?*

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See Reg. 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. SEA POLICIES OR INTERAGENCY AGREEMENTS. The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b," below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other programs; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note: The SEA must also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (Reg. 300.552(a), *Placements.*)

b. LEA-INITIATED PLACEMENTS. When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note: The IEP must be developed before the child is placed. See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meetings.

After the child enters the State school, meetings to review or review the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. *For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?*

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

Note: The Department is considering the possibility of publishing a separate document on out-of-State placements. That paper would address the responsibilities of the placing and receiving States under both EHA-B and Section 504 of the Rehabilitation Act of 1973.

3. *In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?*

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. *How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?*

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The comment following Reg. 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note: Section 300.346(d) requires that the IEP include the "projected dates for initiation of services."

5. *For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?*

An IEP must "be in effect *before* special education and related services are provided to a child." (Reg. 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timelines for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note: Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37-43, below, regarding IEP goals and objectives.)

6. *If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?*

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note: The child must be placed in a special education program immediately after the IEP is finalized. See Question 4, above.

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

7. *What is the purpose of the 30 day timeline in Reg. 300.343(c)?*

The 30 day timeline in Reg. 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up* to 30 days to hold an IEP meeting.

Note: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. *Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?*

Paragraph (e) of Reg. 300.532 *(Evaluation procedures)* provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons...." The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See Reg. 300.345 for requirements on parent participation.)

Note: If, at a separate eligibility meeting, a decision is made that a child is not eligible for special education, the parents should be notified about the decision.

9. *Must IEPs be reviewed or revised at the beginning of each school year?*

No. The basic requirement in the regulations is that IEPs must *be in effect* at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. *How frequently must IEP meetings be held and how long should they be?*

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. *Who can initiate IEP meetings?*

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonably request for such a meeting.

Note: Under Reg. 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the chid's IEP.

12. *May IEP meetings be tape-recorded?*

The use of tape recorders at IEP meetings is not addressed by either the Actor the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "education record," within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and EHA-B (34 CFR 300.560-300.565).

13. *Who can serve as the "representative of the public agency" at an IEP meeting?*

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602(19) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervision the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. *Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?*

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following:

(1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. *For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?*

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. *If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?*

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. *If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?*

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

Note: In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. *If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?*

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. *If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?*

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher." The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. *When may representatives of teacher organizations attend IEP meetings?*

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR Part 99), officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a)(1).)

In addition, EHA-B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. *When may a handicapped child attend an IEP meeting?*

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the "notice of meeting" required under Reg. 300.345(b)—that they may invite their child to participate.

Note: The parents and agency should encourage older handicapped children (particularly those at the secondary school level) to participate in their IEP meetings.

22. *Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?*

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on this issue in a separate document.

23. *Must related services personnel attend IEP meetings?*

No. It is not required that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note: This written recommendation could be a part of the evaluation report.

24. *Are agencies required to use a case manager in the development of a handicapped child's IEP?*

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. *For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?*

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following Reg. 300.532 *(Evaluation procedures)* states:

Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

26. *What is the role of the parents at an IEP meeting?*

The parents of a handicapped child are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

Note: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. *What is the role of a surrogate parent at an IEP meeting?*

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA-B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See Reg. 300.514, *Surrogate parents.)*

28. *Must the public agency let the parents know who will be at the IEP meeting?*

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (Reg. 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21 above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. *Are parents required to sign IEPs?*

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

Note: A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.)

the following are some of the ways in which IEPs are signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. *If the parent signs the IEP, does the signature indicate consent for initial placement?*

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (Reg. 300.504(b)(1)(ii) only if the IEP includes a statement on initial placement which meets the definition of "consent" in Reg. 300.500:

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought...

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary...and may be revoked at any time.

31. *Do parents have the right to a copy of their child's IEP?*

Yes. Section 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself at a reasonable time following the meeting.

Note: The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.

32. *Must parents be informed at the IEP meeting of their right to appeal?*

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (Regs. 300.504-300.505), it would not be necessary for the agency to do so again at the IEP meeting.

- Section 300.504(a) of the regulations states that "written notice which meets the requirements under Reg. 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."
- Section 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (Regs. 300.500-300.589).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

Note: Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in Reg. 300.504(a)(1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See Reg. 300.506. *Impartial due process hearing.)*

33. *Does the IEP include ways for parents to check the progress of their children?*

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon terms, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. *Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?*

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (Reg. 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. *If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?*

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under EHA-B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise (See Reg. 300.513, *Child's status during proceedings.)* The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service would continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

36. *What should be included in the statement of the child's present levels of educational performance?*

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of educatison that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note: Labels such as "mentally retarded" or "deaf" may not be used as a substitute for the description of present levels of educational performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. *Why are goals and objectives required in the IEP?*

The statutory requirements for including annual goals and short term objectives (Section 602(19)(B)), and for having at least an annual review of a handicapped child's IEP (Section 614(a)(5)), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. *What are "annual goals" in an IEP?*

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. *What are "short term instructional objectives" in an IEP?*

"Short term instructional objectives" (also called "IEP objectives") are measureable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. *Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?*

IEP goals and objectives are concerned primarily with meeting a handicapped child's need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. *Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?*

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the

IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note: See Question 56, below, regarding the lengths of IEPs.

42. *When must IEP objectives be written—before placement or after placement?*

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. *Can short term instructional objectives be changed without initiating another IEP meeting?*

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see Ref. 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see Reg. 300.345(c)).

44. *Must the IEP include all special education and related services needed by the child or only those available from the public agency?*

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. *Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?*

Yes. Each handicapped child's IEP must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. *Must the public agency itself directly provide the services set out in the IEP?*

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see Reg. 300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. *Does the IEP include only special education and related services or does it describe the total education of the child?*

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (See Regs. 300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education.

Note: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. *If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?*

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. *When must physical education (PE) be described or referred to in the IEP?*

Section 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. *Regular PE with non-handicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. *Specially designed PE.* If a handicapped students needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b," above.)

Note: The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. *If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?*

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

Note: Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA-B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." See 34 CFR 400.141(f)(10), 400.182(f) (formerly 45 CFR 104.141(f)(10), 104.182(f)).

51. *Must the IEP specify the amount of services or may it simply list the services to be provided?*

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meetings. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note: The parents should be notified whenever this occurs.

52. *Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?*

Yes. Section 300.346(c) provides that the IEP for each handicapped child must include a "statement of...the extent to which the child will be able to participate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with non-handicapped students. Another way is to list the specific regular education classes the child will be attending.

Note: If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirements, the IEP include any non-curricular activities in which the child will be participating with non-handicapped students (e.g., lunch, assembly periods, club activities, and other special events).

53. *Can the anticipated duration of services be for more than twelve months?*

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. *Must the evaluation procedures and schedules be included as a separate item in the IEP?*

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives.

Note: In many instances, these components are incorporated directly into the objectives.

OTHER QUESTIONS ABOUT THE CONTENT OF AN IEP

55. *Is it permissible for an agency to have the IEP completed when the IEP meeting begins?*

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(9) of the Act defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and, whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47-50 (1975).)

56. *Is there a prescribed format or length for an IEP?*

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

Note: In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.

57. *Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?*

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document: *Provided*, That (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. *What provisions on confidentiality of information apply to IEPs?*

IEPs are subject to the confidentiality provisions of both (1) EHA-B (Section 617(c) of the Act; Regs. 300.560-300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA," 20 U.S.C. 1232g). An IEP is an "education record" as that term is used in the FERPA and implementing regulations (34 CFR Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

Note: Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests..." in that information.

59. *If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?*

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

Note: The Department is considering publishing a separate document concerning the education of handicapped children placed in parochial or other private schools by their parents. Questions concerning IEPs for those children would be addressed in that document.

60. *Is the IEP a performance contract?*

No. Section 300.349 makes it clear that the IEP is *not* a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency must provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

[46 FR 5461, Jan. 19, 1981]

PRESCHOOL GRANTS FOR HANDICAPPED CHILDREN
(34 Code of Federal Regulations Part 301)

Subpart A—General

Reg.
301.1 What is the Preschool Grants for Handicapped Children Program
301.2 Who is eligible for an award?
301.3 What kinds of activities may be assisted?
301.4 What regulations apply?
301.5 What definitions apply?

Subpart B—How Does A State Apply For A Grant?

301.10 How does a State become eligible to receive a grant?
301.11 When does a State apply for a grant?
301.12 What are the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all preschool children with handicaps?

Subpart C—How Does The Secretary Make A Grant To A State?

301.20 What requirements apply to estimating the number of handicapped children who will be served in order to receive funds from an excess appropriation?
301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool handicapped children served?

Subpart D—How Does A State Make A Subgrant To An Applicant?

301.30 How does a State distribute the grant money?
301.31 What is the amount of a subgrant to a local educational agency?
301.32 How are adjustments made to a local educational agency's subgrant?

(Authority: 20 U.S.C. 1419, unless otherwise noted.)
[Source: 54 FR 1646, Jan. 13, 1989, unless otherwise noted.]

Subpart A—General

Reg. 301.1 What is the Preschool Grants for Handicapped Children Program?

The Preschool Grants for Handicapped Children program (Preschool Grants program) provides grants to States to assist them in—

(a) Providing special education and related services to handicapped children aged three through five years;

(b) Planning and developing a statewide comprehensive delivery system for handicapped children from birth through age five years; and

(c) Providing direct and support services to handicapped children aged three through five years.

(Authority: 20 U.S.C. 1419)

Reg. 301.2 Who is eligible for an award?

(a) The Secretary makes a grant to each State that submits an application that meets the requirements of this part.

(b) A State may make a subgrant to any local educational agency (LEA) and intermediate educational unit (IEU) that submits an approvable application to the State educational agency (SEA).

(Authority: 20 U.S.C. 1419)

Reg. 301.3 What kinds of activities may be assisted?

Under the Preschool Grants program, the Secretary makes a grant to a State to conduct the following activities:

(a) Provide subgrants to LEAs and IEUs to assist them in providing special education and related services to handicapped children aged three through five years.

(b) Plan and develop a statewide comprehensive service delivery system for handicapped children from birth through age five years.

(c) Provide direct and support services from the SEA to handicapped children aged three through five years.

(Authority: 20 U.S.C. 1419)

Reg. 301.4 What regulations apply?

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Non-procurement).)

(b) The regulations in this Part 301.

(c) The regulations in 34 CFR Part 300.

(Authority: 20 U.S.C. 1419)

Reg. 301.5 What definitions apply?

(a) *Definitions in the Act*. The following terms used in this part are defined in the Act.

Intermediate educational unit
Local educational agency
State
State educational agency

(b) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

(c) *Other definitions*. The following definitions also apply to this part:

"Act" means the Education of the Handicapped Act, as amended.

"Comprehensive service delivery system" means a State's plans and procedures, including goals and objectives, for identifying all handicapped children from birth through age five years and providing special education and related services to those children in accordance with State law, policy, or practice.

"Excess appropriation" means that portion of each appropriation for fiscal years 1987, 1988, and 1989 remaining after the maximum amount of funds for each child counted has been awarded to States based on the most recent child count of children with handicaps aged three through five years receiving special education and related services.

"Part B child count" means the child count required by section 611(a)(3) of the Act.

"Preschool" means the age range of three through five years.

(Authority: 20 U.S.C. 1402, 1419)

Subpart B—How Does A State Apply For A Grant?

Reg. 301.10 How does State become eligible to receive a grant?

(a) For fiscal years 1988, 1989, and 1990 a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State provides education and related services to any handicapped children aged three through five years; and

(3) The State submits an application to the Secretary that meets the requirements of this part.

(b) Beginning in fiscal year 1991, a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State has policies and procedures in its State plan under 34 CFR Part 300 that assure the provision of a free appropriate public education to all handicapped children aged three through five years in accordance with the requirements in 34 CFR Part 300; and

(3) The State submits an application to the Secretary that meets the requirements in this part.

(Authority: 20 U.S.C. 1419(a), (b))

Reg. 301.11 When does a State apply for a grant?

(a) A State shall submit a Preschool Grants application effective for fiscal years 1988 and 1989.

(b) The State shall extend its FYs 1988-1989 application through FY 1990.

(c) For FY 1991 a State shall submit a one, two, or three year application. Thereafter the State shall submit its Preschool Grants application with the three-year State plan under 34 CFR Part 300.

(Authority: 20 U.S.C. 1419(a)(3), (b)(4))

Reg. 301.12 When are the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all preschool children with handicaps?

If a State does not meet the requirements in section 619(b)(1) of the Act—

(a) The State is not eligible for a Preschool Grant;

(b) The State is not eligible for funds under 34 CFR Part 300 for handicapped children aged three through five years;

(c) No State, LEA, IEU, or other public institution or agency is eligible for a grant under Parts C through G of the Act if the grant relates exclusively to programs, projects, and activities pertaining to handicapped children aged three through five years; and

(d) The State is not eligible for funds for three through five-year-old children served under 34 CFR Part 302.

(Authority: 20 U.S.C. 1408; 1411(a)(1)(A); 1419(a), (b))

Subpart C—How Does The Secretary Make A Grant To A State?

Reg. 301.20 What requirements apply to estimating the number of handicapped children who will be served in order to receive funds from an excess appropriation?

(a) In order to receive funds from an excess appropriation based on an estimated increase in the number of handicapped children aged three through five years who will be receiving special education and related services under Part B of the Act on December 1 of the year following the most recent Part B child count, a State must—

(1) Have an increase in the total number of handicapped children aged three through five years served under both 34 CFR Parts 300 and 302 from the previous year; and

(2) Have an increase from the previous year in the total number of handicapped children aged three through five years served under 34 CFR Part 300.

(b) Each State shall develop and implement procedures to estimate accurately the increase in the number of handicapped children aged three through five years who will be receiving special education and related services under 34 CFR Part 300 and 302 by the count dates for these programs for the next fiscal year.

(c) The procedures for making an estimation in paragraph (b) of this section must be based upon estimates from LEAs and IEUs, and other available data, of the number of additional handicapped children aged three through five years that LEAs and IEUs expect to be serving under 34 CFR Parts 300 and 302 on December 1 of the year following the most recent Part B child count.

(d) The State shall provide the estimates on forms provided by the Secretary no later than February 1 of the year in which the Secretary requires estimates.

(e) The State shall attach a copy of the procedures used to make the estimates under paragraph (c) of this section to the estimated count form.

(Authority: 20 U.S.C. 1419(a))
(Approved by the Office of Management and Budget under control number 1820-0552)

Reg. 301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool handicapped children served?

If the actual number of additional handicapped children aged three though five years counted as served on December 1 of the following year under 34 CFR Parts 300 and 302 differs from the estimate submitted by a State in fiscal year 1987, 1988, or 1989, the Secretary increases or decreases the State's grant for the next fiscal year based upon the difference in the number of additional handicapped children who were estimated to be served and the number actually served under 34 CFR Part 300.

(Authority: 20 U.S.C. 1419(a)(2))

Subpart D—How Does A State Make A Subgrant To An Applicant?

Reg. 301.30. How does a State distribute the grant money?

(a) A State shall distribute at least 75 percent of its grant to LEAs and IEUs to be used to provide additional education and related services to handicapped children aged three through five years.

(b) A State may use not more than 20 percent of the grant for—

(1) The planning and development of a statewide comprehensive service delivery system for handicapped children from birth through age five years; and

(2) The provision of direct and support services for handicapped children aged three through five years.

(c) A State may use not more than five percent of the grant for the costs of administering the grant.

(d) If a State provides services to preschool handicapped children because some or all LEAs and IEUs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs and IEUs to provide special education and related services to handicapped children aged three through five years residing in the area served by those LEAs and IEUs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2))

Reg. 301.31 What is the amount of a subgrant to a local educational agency?

From the amount of funds available to LEAs and IEUs in the State, each LEA and IEU is entitled to the sum of—

(a) An amount that bears the same ratio to the maximum amount awarded to the State based on the previous child count as the number of handicapped children aged three though five years in that agency who were receiving special education and related services on the most recent Part B child count bears to the aggregate number of handicapped children aged three through five years receiving special education and related services on the most recent Part B child count in all LEAs and IEUs that are entitled to Preschool Grants funds; and

(b) An amount that bears the same ratio to the State's excess appropriation, if any, as the LEA's or IEU's estimated count of additional handicapped children aged three through five years who will be receiving special education and related services on the next Part B child count bears to the aggregate number of additional handicapped children aged three through five years who will be receiving special education and related services by the next Part B child count in all LEAs and IEUs that are entitled to Preschool Grant funds.

(Authority: 20 U.S.C. 1419(c)(3))

Reg. 301.32 How are adjustments made to a local educational agency's subgrant?

If the actual number of additional handicapped children aged three through five years served under 34 CFR Part 300 in fiscal year 1987, 1988, or 1989 differs from the estimate submitted by an LEA or IEU for that fiscal year, the State shall increase or decrease the LEA's or IEU's grant in the next fiscal year based upon the number of preschool handicapped children who were actually served.

(Authority: 20 U.S.C. 1419(c)(3)(A), (B))

STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN
(34 Code of Federal Regulations Part 302)

Subpart A—General

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302.2 Regulations that apply to State Operated Programs for Handicapped Children
302.3 Definitions

Subpart B—State Educational Agency Participation

302.12 State educational agency as fiscal agent
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Authority: 20 U.S.C. 241c-1, unless otherwise noted).
[Source: 43 FR 16262, Apr. 17, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980. Amended at 53 FR 49144, Dec. 6, 1988, unless otherwise noted.]

Subpart A—General

Reg. 302.1 Scope.

This part applies to programs and projects assisted under section 121 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 241c-1)

Reg. 302.2 Regulations that apply to State Operated Programs for Handicapped Children.

(a) *Regulations.* The following regulations apply to State Operated Programs for Handicapped Children:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 302.

(3) The regulations in 34 CFR Part 200 (general requirements relating to Title I of the Act). However, Reg. 200.92 (Use of funds for services that the applicant is required to provide) does not apply.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))
[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Reg. 302.3 Definitions.

As used in this part (in addition to the definitions set forth in Parts 77 and 200 of this chapter):

"Handicapped children" includes those children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or other health impaired, who because of those impairments need special education.

"Related services" is used in this part as defined in Reg. 300.13 of this chapter.

"Special education" is used in this part as defined in Reg. 300.14 of this chapter.

"State agency" means an institution or agency of the State which has direct responsibility established under State law for providing free public education for handicapped children.

"State-operated school" means a school or a program which is administered directly by a State agency.

"State-supported school" means a school or program operated under contract or other arrangement with a State agency.

(20 U.S.C. 241c-1; 20 U.S.C. 1401 (16), (17))

Comment. A State agency may use funds under this part only to serve those handicapped children for whom the agency is directly responsible for providing free public education. The State agency may serve those handicapped children in State-operated or in State-supported schools. Although typically the State agency contributes a significant portion of the cost of providing education to handicapped children in a State-supported school, the extent of that contribution is irrelevant as long as the State agency is legally responsible for providing education to the handicapped children in that State-supported school.

Subpart B—State Educational Agency Participation

Reg. 302.12 State educational agency as fiscal agent.

The State educational agency may act as the fiscal agent of the State agency in disbursing funds under this part, including transfers of funds to local educational agencies under Subpart D of this part.

(20 U.S.C. 241c-1)

Reg. 302.13 Other State educational agency responsibilities.

In addition to those requirements in Part 200 of this chapter, each State educational agency shall:

(a)—(b) [Reserved]

(c) Assist State agencies and local educational agencies in determining and reporting average daily attendance of handicapped children under Subpart E of this part;

(d) Insure that all handicapped children served with funds under this part are receiving special education in a program which meets the State educational agency standards under Reg. 302.51;

(e) Insure that the information reported under Reg. 302.44(b) is accurate.

(20 U.S.C. 241c-1)
[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980. Amended at 53 FR 49144, Dec. 6, 1988.]

Reg. 302.14 Reallocation of funds between State agencies.

The State educational agency shall reallocate funds (subject to the prior written approval of the Secretary) between State agencies if a handicapped child who generated funds in one participating State agency is transferred to another participating State agency.

(20 U.S.C. 241c-1)

Subpart C—State Agency Participation

Reg. 302.20 State agency eligibility.

Each State agency is eligible to receive a grant under this part for each fiscal year.

(20 U.S.C. 241c-1)

Reg. 302.21 Project application requirements.

(a) In order to receive a grant under this part, a State agency must submit a project application to the State educational agency.

(b) A project application must:

(1) Meet the requirements in Subpart D of Part 200 of this chapter;

(2) Set forth the number of handicapped children to be served with funds under this part;

(3) Describe the nature and purpose of the proposed project and include measurable child-centered objectives;

(4) Identify each school in which the handicapped children are enrolled, the number of those children, and their ages and handicapping conditions;

(5) Describe the educational services currently being provided for handicapped children with State and local funds in each of these schools;

(6) Provide an assessment and description of the needs of those children for special education and related services

based on the best available data, including data on their past educational performance;

(7) Describe each educational service to be provided with funds under this part to meet the needs assessed and described under paragraph (b)(6) of this section;

(8) Describe any proposed training for the school staff and for the parents of those children;

(9) Describe the procedures which will be used to evaluate the effectiveness of the project;

(10) Describe the nature and extent of any proposed coordination with other Federal, State, or local agencies, or related programs, in the development, operation, and administration of the program or project assisted under this part;

(11) Provide for educational services and training for parents of those children, to the extent that parental understanding of the services being provided to their children could contribute to the effectiveness of the program or project;

(12) Describe the procedures to be used in developing and implementing the individualized education program which must be provided for each handicapped child under Part 300 of this chapter;

(13) Describe the procedures which were used to give parents of these children an opportunity to participate in the development of the project application; and

(14) Describe the methods of dissemination of project information.

(Approved by the Office of Management and Budget under control number 1820-0510).
(20 U.S.C. 241c-1)

Reg. 302.22 Parental participation in the development of the project application.

Each State agency shall provide parents of the children to be served with funds under this part with an opportunity to participate in the development of its project application.

(20 U.S.C. 241c-1; 1231d)

Reg. 302.23 State agency responsibilities.

Each State agency shall:

(a) Coordinate and consult with its State educational agency in the development, implementation, supervision, and evaluation of programs and projects assisted under this part.

(20 U.S.C. 241c-1)

Reg. 302.24 Children who may be served.

A State agency may use funds under this part only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children for whom the State agency is directly responsible for providing free public education.

(20 U.S.C. 241c-1)

Reg. 302.25 Reporting by State agency of children transferring to a local educational agency program.

(a) Each State agency which receives funds under this part shall submit an annual report to the State educational agency of all handicapped children who:

(1) Were counted in average daily attendance under section 121 of the Act during the school year 1971-1972 or in a subsequent year; and

(2) Will leave or have left the special education program operated or supported by that agency in order to participate in a special education program operated or supported by a local educational agency.

(b) The State educational agency shall prescribe the manner of submitting the report.

(c) Each State agency shall insure that the report includes:

(1) The name of each child (or other information used by the State to identify the child),

(2) A description of each child's handicapping condition (or other information used by the State to identify the handicapping condition), and

(3) The name of the local educational agency in which the child will enroll.

(Approved by the Office of Management and Budget under control number 1820-0513).
(20 U.S.C. 241c-1)

Subpart D—Local Educational Agency Participation

Reg. 302.30 Local educational agency project application.

(a) In order to receive funds under this part, a local educational agency must submit a project application to the State educational agency.

(b) The application must meet the requirements in Reg. 302.21 and include any other information the State educational agency requires to perform its duties under this part.

(c) The State educational agency may reduce the amount of information submitted under Reg. 302.21, if the local educational agency serves five or fewer handicapped children under this part.

(Approved by the Office of Management and Budget under control number 1820-0510).
(20 U.S.C. 241c-1)

Reg. 302.31 Transfer of funds to local educational agencies.

A local educational agency may receive funds under this part to serve a handicapped child if:

(a) The handicapped child left an educational program for handicapped children operated or supported by a State agency in order to participate in a program operated or supported by the local educational agency;

(b) The child continues to receive an appropriately designed educational program; and

(c) The State agency transfers the funds generated by the child under this part to the local educational agency.

(20 U.S.C. 241c-1)

Comment. 1. Under the statute, it is the responsibility of the State agency to transfer funds to a local educational agency. However, under Reg. 302.12, the State educational agency may transfer the funds directly to the local educational agency as the fiscal agent of the State agency.

2. The local educational agency receives funds based on the number of transfer children that it serves. Subpart E provides the rules for counting these children. The local educational agency submits its count to the State educational agency.

3. It should be noted that funds generated by the count of a child in one year are not available until the following year. Because of this one-year delay in the availability of funds, the determination of which agency (local or State) should receive the funds can become a complex problem. The following clarifications are provided to assist in determining whether or not the transfer of funds to a local educational agency is mandatory.

(a) The local educational agency may receive all funds generated by a child whom the local educational agency counted in the previous year, subject to the compliance by the local educational agency with the requirements of this part.

(b) The State agency may (but is not required to) transfer to the local educational agency funds generated by a child whom the State agency counted in the previous year. For example, the transfer of funds is optional in the following situations:

(1) The State agency counts a child on October 1, and the child enrolls in the local educational agency following that count but during the same school year. The State agency may decide to transfer the funds to the local educational agency when those funds become available (the following year) or may decide to retain those funds for use on other counted handicapped children in that State agency. (If the local educational agency then counts the child, the following year's funds must be transferred.)

(2) The State agency counts a child on October 1 of one school year and the child enrolls in the local educational agency the following school year (the year the funds become available). The State agency may decide to transfer those funds to the local educational agency at the time of the child's enrollment in the local educational agency or may decide to retain those funds for use for other counted handicapped children in that State agency. In examples (1) and (2), uncounted handicapped children may be served on a space available basis (Reg. 302.55).

Although the transfer of funds to the local educational agency is optional under the examples in paragraph (b) above, the State agency may wish to take into account the following in exercising its option: whether or not the State agency continues to maintain approved projects, the number of children who have left the State agency and who are currently enrolled in a local educational agency, and the number of children in approved projects in the State agency.

(c) If a child has left the local educational agency, Reg. 302.33 governs the use of the funds.

Reg. 302.32 Local educational agency use of funds.

(a) A local educational agency which receives funds under this part shall use those funds to supplement the appropriately designed education for handicapped children provided by that agency.

(20 U.S.C. 241c-1(d))
[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980. Amended at 53 FR 49144, Dec. 6, 1988.]

Reg. 302.33 Funds attributable to children who leave the local educational agency.

(a) The State agency shall not transfer funds to a local educational agency if all handicapped children counted under this part cease to be enrolled in that local educational agency.

(b) If a handicapped child counted under this part ceases to be enrolled in the local educational agency, that local educational agency shall notify the State educational agency, and the State educational agency shall require the local educational agency to either:

(1) Retain funds generated by that child under this part to be used for the other handicapped children enrolled in that local educational agency; or

(2) Return all or a portion of those funds to a State agency in which that child was formerly enrolled.

(20 U.S.C. 241c-1(d))

Reg. 302.34 Funds not used by a local educational agency.

If a local educational agency is unable or unwilling to use all or part of the funds available to it under this part, the State educational agency shall transfer the funds to the State agency in which the handicapped children counted under this part were formerly enrolled.

(20 U.S.C. 241-1 (c) and (d))

Subpart E—Amount Of Grants And Counting Average Daily Attendance

Reg. 302.40 Amount of grants.

(a) *Formula for determining the amount of grant.* A State agency is eligible to receive an amount of funds as computed under the formula in section 121(b) of the Act.

(20 U.S.C. 241c-1(b))

(b) *Minimum payment.* In any fiscal year prior to October 1, 1978, no State shall receive an amount of funds under this part which is less than 100 percent of the amount which that State received in the prior fiscal year under section 121 of the Act.

(20 U.S.C. 241c-5)

Reg. 302.41 Eligibility of children to be counted.

(a) A handicapped child may be counted in average daily attendance for the purpose of computing a grant under section 121(b) of the Act, if;

(1) The child is on the membership roll of a State-operated school,

(2) The child is on the membership roll of a State-supported school; or

(3) (i) The child was counted in average daily attendance by a State agency during the school year 1971-1972 or a subsequent year and is now enrolled in a program operated or supported by a local educational agency;

(ii) The child was enrolled in the State agency school for at least one school year (which may not be less than 180 school days);

(iii) The child continues to receive an appropriately designed educational program; and

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(iv) The State agency transfers to the local educational agency in whose program the child is enrolled an amount equal to the sums received by the State agency under this part which are attributable to that child.

(b) There is no minimum number of hours that a child must be receiving educational services per day in order for the child to be eligible to be placed on a membership roll under this section. The length of a school day shall be determined solely by the needs of the handicapped child, as reflected in the child's individualized education program.

(20 U.S.C. 241c-1(b))

Reg. 302.42 Education by more than one agency.

If a handicapped child is receiving free public education from more than one State agency, the State agency which is primarily responsible for the child's education (as determined by the State educational agency) shall be the only State agency to count that child under this part.

(20 U.S.C. 241c-1)

Reg. 302.43 Average daily attendance computation.

For the purpose of this part, average daily attendance means the total membership enrollment of handicapped children who are counted under Reg. 302.41.

(20 U.S.C. 241c-1(b))

Reg. 302.44 Dates for counting and reporting average daily attendance.

(a) *State agency and local educational agency.* Each State agency and local educational agency shall count handicapped children (as specified in Reg. 302.41) on their membership rolls as of October 1 of each year and shall report their average daily attendance to the State educational agency.

(b) *State educational agency.* The State educational agency shall submit a report to the Secretary by the following November 15 which sets forth the information submitted under paragraph (a) of this section.

(20 U.S.C. 241c-1 (b) and (d))

Reg. 302.45 Children counted under section 123.

A handicapped child who is counted in average daily attendance for the purpose of computing a grant under section 123 of the Act (program for neglected or delinquent children) may not be counted under this part.

(20 U.S.C. 241c-1(b))

Reg. 302.46 Children counted under Part B of the Education of the Handicapped Act.

A handicapped child who is counted for the purpose of computing a grant under Part B of the Education of the Handicapped Act may not be counted under this part.

(20 U.S.C. 241c-1(b))

Comment. Effective October 1, 1977, section 611 (a)(5)(A)(iii) of Part B of the Education of the Handicapped Act requires that children counted under this part cannot be counted under Part B. (References to other requirements of Part B are in Subpart H.) However, handicapped children who receive special education and related services from a State agency directly responsible for providing them with free public education may be counted under this Part or under Part B. In addition, handicapped children counted or eligible to be counted under this part may be served with Part B funds, if all requirements of Part B are met.

Subpart F—Program Requirements

Reg. 302.50 The educational program.

(a) Each handicapped child counted under this part must be provided with an educational program designed to meet the child's special educational needs.

(b) The entire amount of funds generated by a child under this part need not be spent on that child, as long as some of the funds are used to meet his or her individual special education needs. The remaining funds generated by that child may be spent on other handicapped children who are enrolled in the State-operated or State-supported school where the child is located, and who were counted under Reg. 302.41.

(c) A project may be supported in whole or in part with funds provided under this part. However, a State agency shall not use funds under this part to pay for its entire educational program for handicapped children.

(20 U.S.C. 241 (c) and (d))

Comment. The benefits a child receives must be designed to meet the child's individualized special education needs. For example, the services of a State agency coordinator would not meet this requirement, unless the State agency can document that those services were designed to meet the child's individualized special education needs. Under Part B of the Education of the Handicapped Act, all special education and related services must be provided under an individualized education program. See Regs. 300.340-300.349 of this chapter.

Reg. 302.51 State standards.

(a) The State educational agency shall have standards insuring that each handicapped child counted under this part receives an appropriately designed education.

(b) The State educational agency shall insure that every child in a State-supported school is provided an education which meets the standards of the State educational agency.

(20 U.S.C. 241c-1)

Reg. 302.52 Maintenance of direction and control.

Each State agency and local educational agency which provides services with funds under this part through contracts with other public or private agencies (such as hospitals, clinics, colleges, universities, and elementary and secondary schools) shall maintain those services under its administrative and supervisory direction and control. A State agency or local educational agency may not provide all those services to handicapped children through contracts with other agencies.

(20 U.S.C. 241c-1)

Reg. 302.53 Dissemination.

Each State agency and local educational agency shall have effective procedures for acquiring and disseminating to teachers, administrators, and parents significant information derived from special educational research, demonstration and similar projects, and for adopting, where appropriate, promising special educational practices developed through these projects for use in program planning and operation under this part.

(20 U.S.C. 241c-1)

Reg. 302.54 Construction and equipment.

(a) Construction undertaken and equipment purchased under this part are subject to the requirements of Regs. 200.80 and 200.81 of this chapter.

(b) Each State agency and local educational agency shall insure that appropriately trained staff will be available to use and operate any equipment acquired with funds under this part.

(20 U.S.C. 241c-1)

Reg. 302.55 Participation of children who were not counted.

Children who may be counted under Reg. 302.41 but who were not counted, may participate in projects on a space available basis if:

(a) All children who were counted are receiving benefits from funds made available under this part; and

(b) All children who were counted are receiving an appropriately designed education commensurate with their needs.

(20 U.S.C. 241c-1)

Reg. 302.56 Participation in programs under Part 201.

Nothing in this part precludes handicapped children from participating in projects funded under Part 201 of this chapter.

(20 U.S.C. 241c-1)

Subpart G—Allowable Costs

Reg. 302.60 General.

(a) [Reserved]

(b) Expenditures

(1) Each agency may use funds under this part for expenditures which are reasonably necessary for activities directly related to the conduct of programs and projects to meet the special education needs of handicapped children.

(2) Permissible expenditures may include planning, evaluating, and disseminating the results of those activities.

(20 U.S.C. 241c-1 and 241g(b))
[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980. Amended at 53 FR 49144, Dec. 6, 1988.]

Reg. 302.61 Special education and related services.

(a) Each agency may use funds under this part for the costs of special education and related services for handicapped children.

(b) The State agency may provide agency-wide services (in addition to services located in particular schools) under this part, if it determines that the educational needs of handicapped children will be better served by that method of programming.

(20 U.S.C. 241c-1)

Reg. 302.62 Tuition and services.

(a) *Tuition.* An agency shall not use funds under this part for the payment of tuition or fees.

(b) *Services.* Parents of handicapped children served under this part shall not be charged for special education or related services provided for those children (including the cost of room and board and non-medical care which are provided in an institutional residential care facility in which the child is placed for educational purposes).

(20 U.S.C. 241c-1)

Reg. 302.63 Transportation costs.

Expenditures for transportation of handicapped children are allowable only under the following conditions:

(a) The State educational agency has determined that the transportation is essential to ensure the child's safety or to enable the child to benefit from the special education or the other related services being provided;

(b) The school in which the child is enrolled has made reasonable efforts to secure other means of or resources for transportation of the child;

(c) There is no State law requiring the provision of the service; and

(d) The transportation is not normally provided to other handicapped children by the agency in whose educational program the child is enrolled.

(20 U.S.C. 241c-1)

Subpart H—Requirements Under Part B Of The Education Of Handicapped Act

Reg. 302.70 Part B regulations.

Regulations under Part B of the Education of the Handicapped Act are located in Part 300 of this chapter.

(20 U.S.C. 1417(b))

Comment. The Secretary advises each recipient to read the relevant regulatory provisions in Part 300, since those regulations provide additional specific rules for meeting the requirements in Regs. 302.71 through 302.74.

Reg. 302.71 Supervision of programs for handicapped children.

Section 612(6) of the Education of the Handicapped Act requires that the State educational agency be responsible for ensuring that all educational programs for handicapped children within the State, including all programs administered by any other State or local agency, are under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency.

(20 U.S.C. 1412(6))

Reg. 302.72 Use of funds for handicapped children.

(a) Section 613(a)(2) of the Education of the Handicapped Act requires each State to insure that funds provided under this part to assist in the education of handicapped children are used only in a manner consistent with a goal of providing a free appropriate public education for all handicapped children.

(b) Paragraph (a) of this section does not limit the requirements of this part or of section 121 of the Act.

(20 U.S.C. 1413(a)(2))

Reg. 302.73 State educational agency standards.

Section 612(6) of the Education of the Handicapped Act requires that any activity to assist the education of handicapped children under this part meet the educational standards of the State educational agency.

(20 U.S.C. 1412(6))

Reg. 302.74 Withholding payments for noncompliance.

(a) Section 616(a)(2)(B) of the Education of the Handicapped Act provides that the Secretary may withhold payments available under this part for assisting the education of handicapped children:

(1) For failure to comply substantially with any provision of section 612 or 613 of the Education of the Handicapped Act; or

(2) In the administration of the annual program plan under Part B of the Education of the Handicapped Act for failure to comply with:

(i) Any provision of Part B of the Education of the Handicapped Act; or

(ii) Any requirements in the application of a local educational agency or intermediate educational unit approved by the State educational agency under that annual program plan.

(b) The Secretary must use the notice and hearing procedures in section 616 of the Education of the Handicapped Act before withholding payments under this section.

(20-U.S.C. 1416)

EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

(34 Code of Federal Regulations Part 303)

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(Authority: 20 U.S.C. 1471-1485, unless otherwise noted.)
[Source: 54 FR 26309, June 22, 1989, unless otherwise noted].

Subpart A—General

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS

Reg. 303.1 Purpose of the early intervention program for infants and toddlers with handicaps.

The purpose of this part is to provide financial assistance to States to—

(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with handicaps and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); and

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with handicaps and their families.

(20 U.S.C. 1471)

Reg. 303.2 Eligible applicants for an award.

Eligible applicants include the 50 States, Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands. The future eligibility of the Republic of Palau will be governed by the terms of the Compact of Free Association.

(20 U.S.C. 1484)

Reg. 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with Reg. 303.527.

(20 U.S.C. 1473, 1479)

Reg. 303.4 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for Reg. 76.103;

(ii) Part 77 (Definitions that Apply to Department Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (General Education Provisions Act—Enforcement); and

(vi) Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)).

(2) The regulations in this Part 303.

(3) The following regulations in 34 CFR Part 300 (Assistance to States for Education of Handicapped Children): Regs. 300.560 through 300.576, and Regs. 300.581 through 300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) "State educational agency" means the lead agency under this part; and

(2) "Special education," "related services, free public education," or "education" means "early intervention services" under this part.

(20 U.S.C. 1401-1418; 1420; 1483)
[54 FR 35156, Aug. 23, 1989]

DEFINITIONS

Note: Sections 303.5-303.23 include definitions that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Aggregate amount (Reg. 303.200(b)(1))
Appropriate professional requirements in the State (Reg. 303.361(a)(1))
Assessment (Reg. 303.322(b)(2))
Consent (Reg. 303.401(a))
Evaluation (Reg. 303.322(b)(1))
Frequency and intensity (Reg. 303.344(d)(2)(i))
From the profession most immediately relevant to the child's or family's needs (Reg. 303.344(g)(3))
Highest requirements in the State applicable to a profession or discipline (Reg. 303.361)(a)(2))
Individualized family service plan and IFSP (Reg. 303.340(b))
Impartial (Reg. 303.421(b))
Location (Reg. 303.344(d)(2)(ii))
Method (Reg. 303.344(d)(2)(iii))
Native language (Reg. 303.401(b))
Personally identifiable (Reg. 303.401(c))
Primary referral sources (Reg. 303.321(d)(3))
Profession or discipline (Reg. 303.361(a)(3))
Special definition of "infants and toddlers" (Reg. 303.200(b)(2))
Special definition of "State" (Reg. 303.200(b)(3))
State approved or recognized certification, licensing, registration or other comparable requirements (Reg. 303.361(a)(4))
Statement of assurances (Reg. 303.120)

Reg. 303.5 Act.

As used in this part, "Act" means the Education of the Handicapped Act.

(20 U.S.C. 1401 *et seq.*)

Reg. 303.6 Case management.

(a) *General.* (1) As used in this part, "case management" means the activities carried out by a case manager to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2) Each child eligible under this part and the child's family must be provided with one case manager who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Case management is an active, ongoing process that involves—

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(b) *Specific case management activities.* Case management activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers; and

(7) Facilitating the development of a transition plan to pre-school services, if appropriate.

(c) *Employment and assignment of case managers.* (1) Case managers may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that case managers are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(d) *Qualifications of case managers.* Case managers must be persons who, consistent with Reg. 303.344(g), have demonstrated knowledge and understanding about—

(1) infants and toddlers who are eligible under this part;

(2) Part H of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(20 U.S.C. 1472(2))

Note: If States have existing case management systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

Reg. 303.7 Children.

As used in this part, "children" means "infants and toddlers with handicaps" as that term is defined in 303.16.

(20 U.S.C. 1472(1))

Reg. 303.8 Council.

As used in this part, "Council" means the State interagency Coordinating Council.

(20 U.S.C. 1472(4))

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Reg. 303.9 Days.

As used in this part, "days" means calendar days.

(20 U.S.C. 1471-1485)

Reg. 303.10 Developmental delay.

As used in this part, "developmental delay" has the meaning given to that term by a State under Reg. 303.300.

(20 U.S.C. 1472(3))

Reg. 303.11 Early intervention programs.

As used in this part, "early intervention program" means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(20 U.S.C. 1471 *et seq.*)

Reg. 303.12 Early intervention services.

(a) *General.* As used in this part, "early intervention services" means services that—

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(i) Under public supervision;

(ii) By "qualified" personnel, as defined in Reg. 303.21, including the types of personnel listed in paragraph (e) of this section.

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to Reg. 303.520(b)(3), Federal or State law provides a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part

(b) *Location of services.* To the extent appropriate, early intervention services must be provided in the types of settings in which infants and toddlers without handicaps would participate.

(c) *General role of service providers.* To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) *Types of services; definitions.* Following are types of services included under "early intervention services," and, if appropriate, definitions of those services:

(1) "Audiology" includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(2) "Case management services" means assistance and services provided by a case manager to a child eligible under this part and the child's family that are in addition to the functions and activities included under Reg. 303.6.

(3) "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) "Health services" (See Reg. 303.13).

(5) "Medical services only for diagnostic or evaluation purposes" means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) "Nursing services" includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) "Nutrition services" includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) "Occupational therapy" includes services to address the functional needs of a child related to the performance of self-help skills, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) "Physical therapy" includes—

(i) Screening of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning, to prevent or alleviate movement dysfunction and related functional problems; and

(iii) Providing services to prevent or alleviate movement dysfunction and related functional problems.

(10) "Psychological services" includes—

(i) Administering psychological and developmental tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) "Social work services" includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a psychosocial developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(12) "Special instruction" includes—

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(13) "Speech-language pathology" includes—

(i) Identification of children with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills.

(14) "Transportation" (see Reg. 303.23).

(e) *Qualified personnel.* Early intervention services must be provided by qualified personnel, including—

(1) Audiologists;
(2) Nurses;
(3) Nutritionists;
(4) Occupational therapists;
(5) Physical therapists;
(6) Physicians;
(7) Psychologists;
(8) Social workers;
(9) Special educators; and
(10) Speech and language pathologists.

(20 U.S.C. 1472(2))
[54 FR 35156, Aug. 23, 1989]

Note 1: With respect to the requirement in paragraph (b) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments (e.g., the home, day care centers, or other community settings). Thus, it is recommended that services be community-based, and not isolate an eligible child or the child's family from settings or activities in which children without handicaps would participate.

Note 2: The list of services in paragraph (*d*) of this section is not exhaustive and may include other types of services, such as vision services, and the provision of respite and other family support services. There also are other types of personnel who may provide services under this part, including vision specialists, paraprofessionals, and parent-to-parent support personnel.

Reg. 303.13 Health services.

(a) As used in this part, "health services" means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) The term includes—

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(1) Such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(20 U.S.C. 1472(2))
[54 FR 35156, Aug. 23, 1989]

Note: The definition in this section distinguishes between the health services that are required under this part, and the medical-health services that are not required. The IFSP requirements in Subpart D provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See Reg. 303.344(e), and the note 2.)

Reg. 303.14 IFSP.

As used in this part, "IFSP" means the individualized family service plan, as that term is defined in Reg. 303.340(b).

(20 U.S.C. 1477)

Reg. 303.15 Include; including.

As used in this part, "include" or "including" means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(20 U.S.C. 1483)
[54 FR 35156, Aug. 23, 1989]

Reg. 303.16 Infants and toddlers with handicaps.

(a) As used in this part "infants and toddlers with handicaps" means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(i) Cognitive development;

(ii) Physical development, including vision and hearing;

(iii) Language and speech development;

(iv) Psychosocial development; or

(v) Self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(20 U.S.C. 1472(1))

Note 1: As used in paragraph (a)(2) of this section, "high probability" is not intended to be viewed as a statistical term. Rather, the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay" applies to conditions with known etiologies and developmental consequences. Examples of these conditions include Down Syndrome and other chromosomal abnormalities, sensory impairments, including vision and hearing, inborn errors of metabolism, microcephaly, severe attachment disorders, including failure to thrive, seizure disorders, and fetal alcohol syndrome.

Note 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as handicapped.

Under this provision, States have the authority to define who would be "at risk of having substantial developmental delays if early intervention services are not provided." In defining the "at risk" population, States may include well-known biological and other factors that can be identified during the neonatal period, and that place infants "at risk" for developmental delay. Commonly cited factors relating to infants include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, and infection. It should be noted that these factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

Reg. 303.17 Multidisciplinary.

As used in this part, "multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in Reg. 303.322, and development of the IFSP in Reg. 303.342.

(20 U.S.C. 1476(b)(3); 1477(a))

Reg. 303.18 Parent.

As used in this part, "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with Reg. 303.405. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1477)

Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the Part B regulations (34 CFR 300.10.)

Reg. 303.19 Policies.

(a) As used in this part, "policies" means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

(1) A State's commitment to develop and implement the statewide system (see Reg. 303.148);

(2) A State's definition of "developmental delay" (see 303.300);

(3) A State's position regarding the provision of services to children who are at risk;

(4) A statement that—

(i) Provides that, subject to Reg. 303.520(b)(3), services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law; and

(ii) Sets out what fees (if any) will be charged for early intervention services, and the basis for those fees;

(5) A State's standards for personnel who provide services to children eligible under this part (see 303.361);

(6) A State's position and procedures related to contracting or making other arrangements with service providers under Subpart F; and

(7) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(20 U.S.C. 1471-1485)
[54 FR 35156, Aug. 23, 1989]

Reg. 303.20 Public agency.

As used in this part, "public agency" includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(20 U.S.C. 1471-1485)

Reg. 303.21 Qualified.

As used in this part, "qualified" means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(20 U.S.C. 1472(2))

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under Part B of the Act (*i.e.*, that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).
2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.
3. Section 303.361 requires States to establish policies and procedures related to personnel standards.

Reg. 303.22 State.

Except as provided in Reg. 303.200(b)(3), "State" means each of the 50 States, Puerto Rico, the District of Columbia, and the jurisdiction of Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(a)(6))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.23 Transportation.

As used in this part, "transportation" includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and related costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(20 U.S.C. 1472(2))

Reg. 303.24 EDGAR definitions that apply.

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public
Secretary

(20 U.S.C. 1471 *et seq.*)

Subpart B—State Application For A Grant

GENERAL REQUIREMENTS

Reg. 303.100 Conditions of assistance.

(a) In order to receive funds under this part for any fiscal year, a State shall—

(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and

(2) Have on file with the Secretary the statement of assurances required under Regs. 303.120 through 303.127.

(b) For years one through five, a State must submit an annual application. Thereafter, a State may submit a three-year application.

(20 U.S.C. 1478)

Reg. 303.101 How the Secretary disapproves a State's application or statement of assurances.

The Secretary follows the procedures in 34 CFR 300.580 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(20 U.S.C. 1478)

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PUBLIC PARTICIPATION

Reg. 303.110 General requirements and timelines for public participation.

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request an exemption from the timelines in paragraph (a) of this section if the State can demonstrate that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that were followed provided an adequate opportunity for public participation and comment.

(20 U.S.C. 1478(a)(4))

Reg. 303.111 Notice of public hearings and opportunity to comment.

The notice required in Reg. 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to Part H of the Act;

(2) The length of the comment period, and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(20 U.S.C. 1478(a)(4)(A))

Reg. 303.112 Public hearings.

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1478(a)(4))

Reg. 303.113 Reviewing and reporting on public comments received.

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Reporting on comments to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency shall include—

(1) A summary of the public comments received as a result of the activities required in Regs. 303.110 through 303.112;

(2) The State's responses to those comments; and

(3) Copies of news releases, advertisements, and announcements used to provide notice.

(20 U.S.C. 1478(a))
(Approved by the Office of Management and Budget under control number 1820-0550)

STATEMENT OF ASSURANCES

Reg. 303.120 General.

(a) A State's statement of assurances must contain the information required in Regs. 303.121 through 303.127.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in Regs. 303.121 through 303.127.

(20 U.S.C. 1478(b))

Reg. 303.121 Reports and records.

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Authority 20 U.S.C. 1478(b)(4))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Authority: 20 U.S.C. 1478(b)(3))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(20 U.S.C. 1478(b)(5)(A))
[54 FR 35156, Aug. 23, 1989]

Note: As used in this part, "commingle" means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.

Reg. 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section—

(1) The total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(i) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities; and

(2) Funds under this part must not be used to displace State or local funds for any particular cost.

(20 U.S.C. 1478(b)(5)(B))

Note: The nonsupplanting requirement in this section prohibits a State from supplanting State and local funds on either an aggregate basis or for a given expenditure. Thus under Part H, whether supplanting has occurred is evaluated on the basis of two tests, as follows:

(1) First, whether State and local expenditures budgeted for the current fiscal year for early intervention services are at least equal to expenditures from the most recent fiscal year for which they are available. (This means that if a State spent $1,000,000 for early intervention services in FY-1, the State must budget at least $1,000,000 in FY-2, unless one of the conditions in paragraph (b)(1) of this section applies.)

(2) Second, whether Part H funds are used to pay for a particular activity that was previously supported with State or local funds. Thus, if a hospital-based project was supported entirely by State and local funds in FY-1, Part H funds could not be used to support that project in FY-2. However, to the extent that new services are added to the hospital project in FY-2, those new services could be paid for with Part H funds.

Reg. 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(20 U.S.C. 1478(b)(6))

Reg. 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in Reg. 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Nonreduction of other benefits.

(20 U.S.C. 1478(b)(2))

Reg. 303.127 Assurance regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part be expended in accordance with the provisions of this part, including the requirements in Reg. 303.3.

(20 U.S.C. 1478(b)(1))

GENERAL REQUIREMENTS FOR A STATE APPLICATION

Reg. 303.140 General.

A State's application under this part must contain the information required in Regs. 303.141 through 303.146.

(20 U.S.C. 1478(a))

Reg. 303.141 Information about the Council.

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart G.

(20 U.S.C. 1478(a)(2))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.142 Designation of lead agency.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(20 U.S.C. 1478(a)(1))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.143 Assurance regarding use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to plan,

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develop, and implement the statewide system required under Subparts D through F.

(20 U.S.C. 1475, 1478(a)(2), (3))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.144 Description of use of funds.

(a) *General.* Each application must include a description of how a State proposes to use its funds under this part for the fiscal year covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.

(b) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Planning, development and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with Regs. 303.521 and 303.527.

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *Activities by other agencies.* If other agencies are to receive funds under this part, the application must include—

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(20 U.S.C. 1478(a)(3), (a)(5))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.145 Information about public participation.

Each application must include the information on public participation that is required in Reg. 303.113(b).

(20 U.S.C. 1478(a)(4))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.146 Equitable distribution of resources.

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(20 U.S.C. 1478(a)(6))
(Approved by the Office of Management and Budget under control number 1820-0550)

SPECIFIC APPLICATION REQUIREMENTS FOR YEARS ONE THROUGH FIVE AND THEREAFTER

Reg. 303.147 Application requirements for first and second years.

A State's annual application for the first and second years of participation under this part must contain the information required in Regs. 303.141 through 303.146.

(20 U.S.C. 1475; 1478(a))

Reg. 303.148 Third year applications.

(a) *General.* A State's third year application under this part must contain the following:

(1) The information required in Regs. 303.141 through 303.146.

(2) Either—

(i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or

(ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in Reg. 303.149.

(3) Other information that the Secretary may require.

(b) *Adoption of policy on statewide system.* Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to Reg. 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(20 U.S.C. 1475(b); 1478(a))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.149 Waiver of the policy adoption requirement for the third year.

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in Reg. 303.148(b), if the State, in its third year application, includes a statement requesting a waiver, including—

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in Reg. 303.148(b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in Reg. 303.341(a), the policy required in Reg. 303.148(b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(20 U.S.C. 1475(b)(2))
(Approved by the Office of Management and Budget under control number 1820-0550)

Note: An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

Reg. 303.150 Fourth year applications.

A State's application for the fourth year of participation under this part must contain—

(a) The information required in Regs. 303.141 through 303.146;

(b) Information and assurances to demonstrate that—

(1) The requirements in Regs. 303.148(b)(1) and (b)(2) are met; and

(2) Subject to Reg. 303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;

(c) Information and assurances about each component of the statewide system, as required in Regs. 3039.160 through 303.175; and

(d) Other information that the Secretary may require.

(20 U.S.C. 1475(b), 1478(a))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.151 States with mandates as of September 1, 1986 to serve children with handicaps from birth.

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with handicaps from birth through two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions in paragraph (a) of this section must—

(1) Have on file with the Secretary a statement of assurances containing the information required in Regs. 303.121 through 303.127;

(2) Submit an annual application for years one through four that contains the information in Regs. 303.141 through 303.146;

(3) Meet the public participation requirements in Regs. 303.110 through 303.113; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with handicaps from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in Reg. 303.152.

(20 U.S.C. 1475(d))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.152 Applications for year five and each year therafter.

(a) *Fifth year application.* A State's application for the fifth year of its participation under this part must contain—

(1) The information required in Regs. 303.141 through 303.146, and Regs. 303.160 through 303.175;

(2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;

(3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all children in the State who are eligible under this part and their families;

(4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under Regs. 303.302; and

(5) Other information that the Secretary may require.

(b) *Applications for succeeding years.* A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.

(20 U.S.C. 1475(c); 1478(a); 1476(b)(2))
(Approved by the Office of Management and Budget under control number 1820-0550)

APPLICATION REQUIREMENTS FOR YEARS FOUR, FIVE, AND THEREAFTER RELATED TO COMPONENTS OF A STATEWIDE SYSTEM

Reg. 303.160 State definition of developmental delay.

Each application must include the State's definition of "developmental delay." The definition must include the information required in Reg. 303.300.

(20 U.S.C. 1476(b)(1))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.161 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in Reg. 303.301.

(20 U.S.C. 1476(b)(7))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.162 Timetables for serving all eligible children.

Each application must include an assurance that the timetables required in Reg. 303.302 have been established and will be met.

(20 U.S.C. 1476(b)(2))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.163 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in Reg. 303.320.

(20 U.S.C. 1476(b)(6))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.164 Comprehensive child find system.

Each application must include—

(a) The policies and procedures required in Reg. 303.321(b)

(b) Information demonstrating that the requirements on coordination in Reg. 303.321(c) are met;

(c) The referral procedures required in Reg. 303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in Reg. 303.321(e).

(20 U.S.C. 1476(b)(5))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.165 Evaluation, assessment, and nondiscriminatory procedures.

Each application must include information to demonstrate that the requirements in Regs. 303.322 and 303.323 are met.

(20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.166 Individualized family service plans.

Each application must include—

(a) An assurance that the IFSP requirements in Reg. 303.341 will be met; and

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in Regs. 303.340, 303.342, 303.343, and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in Reg. 303.344.

(20 U.S.C. 1476(b)(4); 1477(d))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.167 Comprehensive system of personnel development (CSPD).

Each application must include the following:

(a) Information to show that the requirements in Reg. 303.360(a) are met. A State meets this requirement by either—

(1) Incorporating the State's CSPD procedures under Part B of the Act (34 CFR 300.380 through 300.387); or

(2) Including procedures that the State has developed.

(b) An assurance that the State's personnel development system will meet the requirements in Reg. 303.360(b).

(20 U.S.C. 1476(b)(8))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.168 Personnel standards.

(a) Each application must include policies and procedures that are consistent with the requirements in Reg. 303.361.

(20 U.S.C. 1476(b)(13))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.169 Procedural safeguards.

Each application must include procedural safeguards that—

(a) Are consistent with Regs. 303.400 through 303.405, 303.420 through 303.425, and 303.480; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in Regs. 303.420(b) and 303.421 through 303.425.

(20 U.S.C. 1476(b)(12))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.170 Supervision and monitoring of programs.

Each application must include information to show that the requirements in Reg. 303.501 are met.

(20 U.S.C. 1476(b)(9)(A))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.171 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in Regs. 303.510 through 303.512.

(20 U.S.C. 1476(b)(9))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.172 Policies and procedures related to financial matters.

Each application must include—

(a) Funding policies that meet the requirements in Regs. 303.520 and 303.521;

(b) Information about funding sources, as required in Reg. 303.522;

(c) Procedures to ensure the timely delivery of services, in accordance with Reg. 303.525; and

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with Regs. 303.527(b) and 303.528.

(20 U.S.C. 1476(b)(9)(D); (E); (b)(11); 1481)
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.173 Interagency agreements; resolution of individual disputes.

Each application must include—

(a) A copy of each interagency agreement that has been developed under Reg. 303.523; and

(b) Information to show that the requirements in Reg. 303.524 are met.

(20 U.S.C. 1476(b)(9)(E))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.174 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in Reg. 303.526.

(20 U.S.C. 1476(b)(10))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.175 Data collection.

Each application must include procedures that meet the requirements in Reg. 303.540.

(20 U.S.C. 1476(b)(14))
(Approved by the Office of Management and Budget under control number 1820-0550)

PARTICIPATION BY THE SECRETARY OF THE INTERIOR

Reg. 303.180 Eligibility of the Secretary of the Interior for assistance.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for assistance for the provision of early intervention services to children with handicaps and their families on reservations served by the elementary and secondary schools operated for Indians by the Department of the Interior.

(b) The Secretary of the Interior may receive an award under this part only after submitting an application that—

(1) Meets the conditions of assistance required by Reg. 303.100; and

(2) Is approved by the Secretary.

(20 U.S.C. 1484(b))

Subpart C—Procedures For Making Grants To States

Reg. 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

(1) "Aggregate amount" means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under Reg. 303.203 and to the jurisdictions under Reg. 303.204;

(2) "Infants and toddlers" means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

(3) "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(20 U.S.C. 1484(c))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.201 Distribution of allotments from nonparticipating States.

If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with Reg. 303.200(a).

(20 U.S.C. 1484(d))

Reg. 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under Reg. 303.200.

(20 U.S.C. 1484(c)(1))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.203 Payments to the Secretary of the Interior.

Subject to Reg. 303.180(a), the amount of the payment to the Secretary of the Interior for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under Reg. 303.204.

(20 U.S.C. 1484(b))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.204 Payments to the jurisdictions.

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in Reg. 303.2 in accordance with their respective needs.

(20 U.S.C. 1484(a))

Subpart D—Program And Service Components Of A Statewide System Of Early Intervention Services

GENERAL

Reg. 303.300 State definition of developmental delay.

Each statewide system of early intervention services (system) must include the definition of "developmental delay" that will be used by the State in carrying out programs under this part. The State's definition must—

(a) Specify that a child may be determined to be eligible if the child has a delay, in accordance with paragraphs (b) and (c) of this section, in one or more of the following developmental areas: Cognitive development; physical development, including vision and hearing; language and speech development; psychosocial development; or self-help skills;

(b) Designate the levels of functioning or other criteria, that will be used in determining a child's eligibility as a result of developmental delay; and

(c) Describe the procedures the State will use to determine the existence of a developmental delay in each developmental area included in paragraph (a) of this section.

(20 U.S.C. 1472(1), 1478(b)(1))
[54 FR 35156, Aug. 23, 1989]

Note: Under Reg. 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

Reg. 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons who are handicapped.

(20 U.S.C. 1476(b)(7))
(Approved by the Office of Management and Budget under control number 1820-0550)

Note: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

Reg. 303.302 Timetables for serving all eligible children.

Each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with handicaps no later than the beginning of the fifth year of the State's participation under this part.

(20 U.S.C. 1476(b)(2))

IDENTIFICATION AND EVALUATION

Reg. 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part. The public awareness program must provide for informing the public about—

(a) The State's early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(20 U.S.C. 1476(b)(6))

Note 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who are handicapped; and

4. Includes a variety of methods for informing the public about the provisions of this part.

Note 2. Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

Reg. 303.321 Comprehensive child find system.

(a) *General*. (1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CFR 300.128), and meets the requirements in paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) *Procedures*. The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) *Coordination*. (1) The lead agency with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including efforts in the—

(i) Assistance to States Program under Part B of the Act;

(ii) Maternal and Child Health program under Title V of the Social Security Act;

(iii) Medicaid's Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program under Title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act; and

(v) Head Start Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) *Referral procedures*. (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with Regs. 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with Reg. 303.342(a) or Reg. 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources; and

(ii) Ensure that referrals are made no more than two working days after a child has been identified.

(3) As used in paragraph (d)(1) of this section, "primary referral sources" includes—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) *Timelines for public agencies to act on referrals*. Once the public agency receives a referral, it shall, within 45 days—

(1) Complete the evaluation and assessment activities in Reg. 303.322; and

(2) Hold an IFSP meeting, in accordance with Reg. 303.342.

(20 U.S.C. 1476(b)(5))
[54 FR 35156, Aug. 23, 1989]

Note: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

Reg. 303.322 Evaluation and assessment.

(a) *General*. (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) "Evaluation" means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with handicaps" in Reg. 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique needs;

(ii) The family's strengths and needs related to development of the child; and

(iii) The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Language and speech development.

(D) Psychosocial development.

(E) Self-help skills.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be designed to determine the strengths and needs of the family related to enhancing the development of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its strengths and needs related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in Reg. 303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with Reg. 303.345(b)(1) and (b)(2).

(20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))
[54 FR 35156, Aug. 23, 1989]

Note: This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) Section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) Section 677(a)(1) (multidisciplinary assessment).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family's strengths and needs related to the development of the child (section 677(d)(2), and (2) the child's functioning level in each of the five developmental areas (section 677(d)(1)).

Reg. 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))

INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPs)

Reg. 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and Regs. 303.341 through 303.346.

(b) As used in this part, "individualized family service plan" and "IFSP" mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must—

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(1) Be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;

(2) Be based on the multidisciplinary evaluation and assessment of the child, and the assessment of the child's family, as required in Reg. 303.322; and

(3) Include services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

(c) *Lead agency responsibility.* The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute, or assign responsibility.

(20 U.S.C. 1477)
[54 FR 30823, July 24, 1989]

Note: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in Reg. 303.344, and (2) is developed in accordance with the requirements of this part.

Reg. 303.341 Meeting the IFSP requirements for years four and five.

(a) *Fourth year requirements.* No later than the beginning of the fourth year of a State's participation under this part, the State shall ensure that—

(1) Evaluations and assessments are conducted in accordance with Reg. 303.322;

(2) An IFSP is developed, in accordance with Regs. 303.342(a) and 303.343(a), for each child determined to be eligible under this part and the child's family; and

(3) Case management services are available to each eligible child and the child's family.

(b) *Requirements for the fifth year.* No later than the beginning of the fifth year of a State's participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child's family.

(20 U.S.C. 1476(b)(2), (b)(4), 1477(a)(2), (c))
(Approved by the Office of Management and Budget under control number 1820-0550)
[54 FR 35156, Aug. 23, 1989]

Reg. 303.342 Procedures for IFSP development, review, and evaluation.

(a) *Meeting to develop initial IFSP; timelines.* For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in Reg. 303.321(e).

(b) *Periodic review.* (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under Reg. 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) *Accessibility and convenience of meetings.*

(1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(20 U.S.C. 1477)
(Approved by the Office of Management and Budget under control number 1820-0550)
[54 FR 30823, July 24, 1989]

Note: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

Reg. 303.343 Participants in IFSP meetings and periodic reviews.

(a) *Initial and annual IFSP meetings.* (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so.

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The case manager that has been working with the family since the initial referral of the child for evaluation, or that has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in Reg. 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

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(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including—

(i) Participating in a telephone conference call;

(ii) Having a knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) *Periodic review.* Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(20 U.S.C. 1477(b))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.344 Content of IFSP.

(a) *Information about the child's status.* (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, language and speech development, psychosocial development, and self-help skills.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* With the concurrence of the family, the IFSP must include a statement of the family's strengths and needs related to enhancing the development of the child.

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, location, and method of delivering the services; and

(ii) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

(i) "Frequency" and "intensity" mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis;

(ii) "Location" means, subject to Reg. 303.12(b), where a service is provided (e.g., in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child); and

(iii) "Method" means how a service is provided.

(e) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) If necessary, the steps that will be undertaken to secure those services through public or private resources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(f) *Dates; duration of services.* The IFSP must include the projected dates for initiation of the services in paragraph (d)(1) of this section, and the anticipated duration of those services.

(g) *Case manager.* (1) The IFSP must include the name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same case manager to be responsible for implementing a child's and family's IFSP who was appointed at the time that the child was initially referred for evaluation; or

(ii) Appoint a new case manager.

(3) As used in paragraph (g)(1) of this section, the term "profession" includes "case management."

(h) *Transition at age three.* (1) The IFSP must include the steps to be taken to support the transition of the child, upon reaching age three, to—

(i) Preschool services under Part B of the Act, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in Reg. 303.322, and copies of IFSPs that have been developed and implemented in accordance with Regs. 303.340 through 303.346.

(20 U.S.C. 1477(d))
(Approved by the Office of Management and Budget under control number 1820-0550)
[54 FR 35156, Aug. 23, 1989]

Note 1: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process are determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 2: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with Reg. 303.12.

The "other services" in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the case manager, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the case manager to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 3: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the case manager in initiating those services, and (c) what actions will be taken by the parents.

Note 4: It is important for the lead agency to take steps to ensure a smooth and effective transition of children eligible under this part to special education and related services under Part B of the Act. This is especially critical if the lead agency and the State educational agency (SEA) are not the same agency in a State. In this situation, agreement between the two agencies regarding the responsibilities of each agency during the transition period is very important. Agreements could be in the form of existing or new interagency agreements. Examples of important areas that might be addressed in such agreements include the following:

1. The assignment of financial and other responsibilities during transition, including the (a) performance of evaluations, (b) development of individualized education programs (IEP's) that meet the requirements in 34 CFR 300.340 through 300.349, if appropriate, and (c) provision of services on a continuous, uninterrupted basis.

2. Procedures to ensure a smooth transfer of responsibilities from local service providers to local educational agencies (LEAs), including any requirements for continued services under this part that are the responsibility of the LEAs.

3. Other provisions necessary to ensure effective transition of children under this part to preschool services under Part B of the Act. Agreements that are made between the two agencies need to be flexible enough to ensure that gaps in services will not occur.

Reg. 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in Reg. 303.322, if the following conditions are met;

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the case manager who will be responsible, consistent with Reg. 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in Reg. 303.322(e).

(20 U.S.C. 1477(c))

Note: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible); and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

Reg. 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(20 U.S.C. 1477)

PERSONNEL TRAINING AND STANDARDS

Reg. 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development. Subject to paragraph (b) of this section, a State's current personnel development system required under Part B of the Act (34 CFR 300.380 through 300.387) may be used to satisfy this requirement.

(b) The personnel development system under this part must—

(1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as case managers; and

(3) Ensure that the training provided relates specifically to—

(i) Meeting the interrelated psychosocial, health, developmental, and educational needs of eligible children under this part; and

(ii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(20 U.S.C. 1476(b)(8))

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Reg. 303.361 Personnel standards.

(a) As used in this part—

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families, who are served by State, local, and private agencies.

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(20 U.S.C. 1476(b)(13))
[54 FR 30823, July 24, 1989; 54 FR 35156, Aug. 23, 1989]

Note: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

Subpart E—Procedural Safeguards

GENERAL

Reg. 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart, and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(20 U.S.C. 1480)

Reg. 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) "Native language," when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1480)

Reg. 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under Part B of the Act (CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(20 U.S.C. 1480(3))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Consent of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) *Native language.* (1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(20 U.S.C. 1480(5), (6))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under Reg. 303.322; and

(2) Initiating the provision of early intervention services for the first time (i.e., at the time that the initial IFSP is developed).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(20 U.S.C. 1480)
[54 FR 35156, Aug. 23, 1989]

Note 1: In addition to the consent requirements in this section, other consent requirements (regarding personally identifiable information) are included in the confidentiality requirements in the regulations under Part B of the Act (34 CFR 300.571), and in 34 CFR Part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2: The Part B regulations contain procedures to enable public agencies to initiate a due process hearing or use other procedures to override a parent's refusal to consent to the initial evaluation of the parent's child. Those procedures apply to eligible children under this part, since the Part B evaluation requirement applies to all handicapped children in a State, including infants and toddlers.

Reg. 303.405 Surrogate parents.

(a) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in Reg. 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.*

(1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(20 U.S.C. 1480(4))

IMPARTIAL PROCEDURES FOR RESOLVING INDIVIDUAL CHILD COMPLAINTS

Reg. 303.420 Administrative resolution of individual child complaints by an impartial decision-maker.

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in Reg. 303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512; or

(b) Developing procedures that—

(1) Meet the requirements in Regs. 303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(20 U.S.C. 1480(1))
(Approved by the Office of Management and Budget under control number 1820-0550)

Note 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of an impartial decision-maker, who is not an employee of any agency involved in the provision of early intervention services, to resolve a dispute between the parent and the public agency. The agency is bound by the decision of the impartial decision-maker, and is required to implement the decision, unless it is reversed on appeal.

A different type of administrative procedure is included in Regs. 303.510 through 303.512 of Subpart F. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints, and those that are systemic in nature), and (2) resolving the complaint, if the agency determines that a violation has occurred.

Note 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either Part B or Part H of the Act, some States have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in Reg. 303.423.

Reg. 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part, and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, "impartial" means that the person appointed to implement the complaint resolution process—

(i) is not an employee of any agency or program involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(20 U.S.C. 1480(1))

Reg. 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under Reg. 303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

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(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(20 U.S.C. 1480)

Reg. 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(20 U.S.C. 1480(1))
[54 FR 35156, Aug. 23, 1989]

Note: Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties. (See 34 CFR 300.512). Thus, if a State, in meeting the requirements of Reg. 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth through two age range change so rapidly, quick resolution of complaints is important.

Reg. 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(20 U.S.C. 1480(1))

Reg. 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(20 U.S.C. 1480(7))

CONFIDENTIALITY

Reg. 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the following modifications:

(1) Any reference to the "State educational agency" means the lead agency under this part.

(2) Any reference to "education of handicapped children," "education of all handicapped children," or "provision of free public education to all handicapped children" means the provision of services to children eligible under this part and their families.

(3) Any reference to "local educational agencies" and "intermediate educational units" means local service providers.

(4) Any reference to 34 CFR 300.128 means Regs. 303.164 and 303.321.

(5) Any reference to 34 CFR 300.129 means this section (Reg. 303.460).

(20 U.S.C. 1480(2), 1483)
[54 FR 35156, Aug. 23, 1989]

Note: With the modifications in paragraphs (b)(1) through (b)(5) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (303.560).

The Part B provisions incorporate by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

GENERAL

Reg. 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(20 U.S.C. 1476(b)(9))

Reg. 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance under this part, to ensure compliance with the provisions of this part.

(b) *Methods of administering programs.* In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring of agencies, institutions, and organizations receiving assistance under this part.

(2) Enforcement of any obligations imposed on those agencies under Part H of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correction of deficiencies that are identified through monitoring.

(20 U.S.C. 1476(b)(9)(A))

LEAD AGENCY PROCEDURES FOR RESOLVING COMPLAINTS

Reg. 303.510 Adopting complaint procedures.

Each lead agency shall adopt written procedures for—

(a) Receiving and resolving any complaint that one or more requirements of this part are not being met; and

(b) Conducting an independent on-site investigation of a complaint if the lead agency determines that an on-site investigation is necessary.

(20 U.S.C. 1476(b)(9))
(Approved by the Office of Management and Budget under control number 1820-0550)

Note: Because of the interagency nature of Part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. Complaints under these procedures are filed with the lead agency.

Reg. 303.511 An organization or individual may file a complaint.

An individual or organization may file a written signed complaint with the lead agency. The complaint must include—

(a) A statement that the State has violated a requirement of Part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

(20 U.S.C. 1476(b)(9))

Reg. 303.512 Minimum complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 days after the agency receives the complaint—

(1) To carry out an independent on-site investigation, if necessary; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the lead agency.

(20 U.S.C. 1476(b)(9))

POLICIES AND PROCEDURES RELATED TO FINANCIAL MATTERS

Reg. 303.520 Policies related to payment for services.

(a) *General.* Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in Reg. 303.523.

(b) *Specific funding policies.* A State's policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family.

(c) *Procedures to ensure the timely provision of services.* No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(20 U.S.C. 1476(b)(9))
(Approved by the Office of Management and Budget under control number 1820-0550)

Reg. 303.521 Fees.

(a) *General.* A State may establish, consistent with Reg. 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in Reg. 303.321;

(2) Evaluation and assessment, as included in Reg. 303.322, and including the functions related to evaluation and assessment in Reg. 303.12.

(3) Case management, as included in Regs. 303.6 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in Regs. 303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in Subpart E, and the other components of the statewide system of early intervention services in Subparts D and F.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with handicaps from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(20 U.S.C. 1472(2))

Reg. 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the EHA;

(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmentally Disabled Assistance and Bill of Rights Act (Pub. L. 94-103); and

(7) Other Federal programs.

(20 U.S.C. 1476(b)(9)(B))
[54 FR 35156, Aug. 23, 1989]

Reg. 303.523 Interagency agreements.

(a) *General*. Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility*. Each agreement must define the financial responsibility of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes*. (1) Each agreement must include procedures for achieving a timely resolution of intra- and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components*. Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(20 U.S.C. 1476(b)(9)(F))

Note: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

Reg. 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in Reg. 303.523(c)(2)(ii).

(b)(1) During the pendency of a dispute, the lead agency shall—

(i) Assign financial responsibility to an agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) Pay for the service, in accordance with the "payor of last resort" provisions in Reg. 303.527.

(2) If, in resolving the dispute, the lead agency determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made, the lead agency shall—

(i) Reassign the responsibility to the appropriate agency; and

(ii) Make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures in Reg. 303.525.

(20 U.S.C. 1476(b)(9)(E))

Reg. 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(20 U.S.C. 1476(b)(9)(D))

Reg. 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(20 U.S.C. 1476(b)(10))

Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

Reg. 303.527 Payor of last resort.

(a) *Nonsubstitution of funds*. Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of Part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments; reimbursement*. (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in Reg. 303.12;

(ii) Eligible health services (see Reg. 303.13); and

(iii) Other functions and services authorized under this part, including child find, and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or "well-baby" health care (see Reg. 303.13(c)(1).

(c) *Non-reduction of benefits*. Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (SSA) (relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(20 U.S.C. 1481)

Note: The Congress intended that the enactment of Part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to Title XIX of the Social Security Act. That amendment states, in effect, that nothing in that title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to a handicapped infant or toddler because such services are included in the child's IFSP adopted pursuant to Part H of the EHA.

Reg. 303.528 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with Reg. 303.527(b).

(20 U.S.C. 1476(b)(11))

REPORTING REQUIREMENTS

Reg. 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting the data required under section 676(b)(14) of the Act, and other information that the Secretary may require, including information required under section 618 of the Act.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(20 U.S.C. 1476(b)(14))
(Approved by the Office of Management and Budget under control number 1820-0550)

USE OF FUNDS FOR STATE ADMINISTRATION

Reg. 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with handicaps.

(20 U.S.C. 1473; 1476(b)(9))

Subpart G—State Interagency Coordinating Council

GENERAL

Reg. 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of 15 members.

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(b) The Council and the chairperson of the Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(20 U.S.C. 1482(a))
[54 FR 35156, Aug. 23, 1989]

Note. The number of members on the Council was established by statute. However, to the extent that a State determines that full and effective representation requires more than 15 members, it would be appropriate for the Council to request the Governor to appoint additional members on an ex officio basis, or, with the permission of the Governor, for the Council chairperson to take that action.

In addition to appointing ex officio members to the Council, consideration might be given to establishing (1) regional committees, or (2) special committees to address key issues related to the effective implementation of this part.

To the extent that additional members are added—either on an ex officio basis or through the establishment of regional or special committees—the Council may wish to ensure that the general proportion of parents on the Council (as specified in Reg. 303.601(a) is maintained. However, to avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

In any deliberations by the Council for increasing the number of people who have a role in Council activities, it is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

Reg. 303.601 Composition.

The Council must be composed of the following:

(a) At least—

(1) Three members who are parents of infants and toddlers with handicaps or of handicapped children aged three through six;

(2) Three public or private providers of early intervention services;

(3) One representative from the State legislature; and

(4) One person in personnel preparation.

(b) Other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to eligible children and their families, and others selected by the Governor.

(20 U.S.C. 1482(b))
[54 FR 35156, Aug. 23, 1989]

Note: In order to enhance the effectiveness of the Council in carrying out its functions under this part, it is recommended that efforts be made to include representatives of each State agency or other major service provider that has a role in the State's early intervention program, such as the state health and education departments, health care providers, and other key providers. It is important for State agency representatives to have the authority to effectively represent their agencies.

A representative of the SEA who is responsible for, or knowledgeable about, the Preschool Grants Program under Section 619 of the Act (34 CFR Part 301) would be an appropriate person to be appointed as a regular member of the Council. Inclusion of such a person will help to ensure the smooth transition of children under this part who will require special education and related services under this program.

It is recommended that the person selected to represent the field of personnel preparation have expertise in early intervention programs for children eligible under this part and their families.

Reg. 303.602 Use of funds by the Council.

(a) *General.* Subject to the approval by the Governor, the Council may use funds under this part to hire staff and obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* (1) Except as provided in paragraph (b)(2) of this section, Council members shall serve without compensation from funds available under this part, but the Council shall reimburse its members for reasonable and necessary expenses for attending meetings and performing Council duties. Funds provided under this part may be used for this purpose.

(2) Funds under this part may be used to pay compensation if—

(i) A Council member is not employed; or

(ii) A Council member must forfeit wages from other employment when participating in official Council functions.

(20 U.S.C. 1479; 1482(c), (d))

Reg. 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(20 U.S.C. 1482(c), (d))
[54 FR 30823, July 24, 1989]

Reg. 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(20 U.S.C. 1482(f))
[54 FR 35156, Aug. 23, 1989]

FUNCTIONS OF THE COUNCIL

Reg. 303.650 General.

Each Council shall—

(a) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(b) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(c) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

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(1) Seeking information from service providers, case managers, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(2) Taking steps to ensure that any policy problems identified under paragraph (c)(1) of this section are resolved; and

(d) To the extent appropriate, assist the lead agency in the resolution of disputes.

(20 U.S.C. 1482(e))

Reg. 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under Reg. 303.523.

(20 U.S.C. 1482(e)(1))

Reg. 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part, and amendments to those applications.

(20 U.S.C. 1482(e)(2))

Reg. 303.653 Annual report to the Secretary.

(a) Each Council shall—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(20 U.S.C. 1482(e)(3))

EXISTING COUNCILS

Reg. 303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(20 U.S.C. 1482(g))

REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED PROGRAM

(34 Code of Federal Regulations Part 304)

Subpart A—General

Reg.
304.1 The Removal of Architectural Barriers to the Handicapped program
304.2 Applicability of regulations in this part
304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped Program
304.4 Definitions
304.5 Acronyms that are used
304.6-304.9 [Reserved]

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304.12-304.14 [Reserved]
304.15 Submission of an application by the Secretary of the Interior
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304.30 Submission of an application to the SEA
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304.41 Reallocation of excess funds
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304.50 Standards for the removal of architectural barriers
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Subpart G—What Are The Administrative Responsibilities Of An SEA?

304.60 Amount available for SEA administration
304.61 Administrative responsibilities and allowable costs
304.62-304.69 [Reserved]

Authority: 20 U.S.C. 1406, unless otherwise noted.

[Source: 50 FR 29330, July 18, 1985; 50 FR 32172, Aug. 9, 1985; 53 FR 6944, Mar. 3, 1988, unless otherwise noted]

Subpart A—General

Reg. 304.1 The Removal of Architectural Barriers to the Handicapped program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to handicapped children and other handicapped individuals.

(20 U.S.C. 1406)

Reg. 304.2 Applicability of regulations in this part.

This part applies to assistance under Section 607 of the Education of the Handicapped Act.

(20 U.S.C. 1406)

Reg. 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.

The following regulations apply to assistance under the Removal of Architectural Barriers to the Handicapped program:

(a) The regulations in this Part 304.

(b) The Education Department General Administrative Regulations (EDGAR) set out in the following parts of Title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants);

(2) Part 76 (State-administered Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and<

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1406; 20 U.S.C. 3474(a))

Reg. 304.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Local educational agency
Project
Public
Secretary
State
State educational agency
Subgrant

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5(a), 300.7, 300.13, and 300.14:

Handicapped children
Intermediate educational unit
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17), (22))

(c) *Other definitions that apply to this part.* In addition to the definitions referred to in paragraph (a) and (b), the following definitions apply to this part:

(1) "Alteration," as applied to a building or structure, means a change or rearrangement in the structural part or elements, or in the means of egress, or in moving from one location or position to another. It does not include normal maintenance and repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

(20 U.S.C. 1406, 41 CFR 101-19.603)

(2) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(20 U.S.C. 1401(a)(5), 1406)

Reg. 304.5 Acronyms that are used.

The following acronyms are used in this part:
"IEU" stands for intermediate educational unit.
"LEA" stands for local educational agency.
"SEA" stands for State educational agency.

(20 U.S.C. 1406)

Regs. 304.6- 304.9 [Reserved]

Subpart B—How Does An SEA Or The Secretary Of The Interior Apply For A Grant?

Reg. 304.10 Submission of an SEA application.

In order to receive funds under this part, and SEA must submit an application to the Secretary for review and approval.

(20 U.S.C. 1406)

Reg. 304.11 Content of SEA application.

(a) Each SEA shall include in its application assurances that—

(1) Funds received under this part will be used to pay the costs of altering existing buildings and equipment in accordance with the standards in Reg. 304.50;

(2) In using funds appropriated under Pub. L. 98-8, special consideration will be given to projects in areas experiencing high rates of unemployment; and

(Pub. L. 98-8, "Education for the Handicapped," 97 Stat. 27 (1983); S. Rep. No. 17, 98th Cong., 1st Sess. 33-34 (1983))

(3) Funds provided under this part that are appropriated under Pub. L. 98-8 will, to the extent practicable, be utilized in manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks immediately preceding March 24, 1983 (the date of enactment of Pub. L. 98-8).

(Pub.L. 98-8, section 101(c); 97 Stat. 31-32 (1983))

(b) Each SEA application must also include the following information:

(1) A description of the goals and objectives to be supported by the grant in sufficient detail for the Secretary to determine what will be achieved with the grant.

(2) The estimated number of LEAs and IEUs that will receive subgrants, and a description of the procedures and criteria the SEA will use to award subgrants to LEAs and IEUs, including any priorities established by the SEA under Reg.

304.51 (*see* Reg. 304.40 and Subpart F, "What Conditions Must be Met by an SEA, LEA or IEU?").

(20 U.S.C. 1406)
[Approved by the Office of Management and Budget under control number 1820-0534]

Regs. 304.12-304.14 [Reserved]

Reg. 304.15 Submission of an application by the Secretary of the Interior.

In order to receive a grant under this part, the Secretary of the Interior shall submit an application that is consistent with the requirements under Reg. 304.11.

(20 U.S.C. 1406)

Reg. 304.16 Applicable regulations.

The Secretary of the Interior shall comply with all the requirements that apply to SEAs under Subparts A, C, F, and G of this part.

(20 U.S.C. 1406)

Regs. 304.17-304.19 [Reserved]

Subpart C—How Does The Secretary Make A Grant?

Reg. 304.20 Amount of an SEA's grant.

(a) For the purpose of this section—

(1) The term "Insular Area" means American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(2) The term "handicapped children" means the number of handicapped children determined by the Secretary—

(i) Under section 611 of the Act, to be receiving special education and related services; or

(ii) In average daily attendance at schools for handicapped children or supported by a State agency within the meaning of section 146 of Title I of the Elementary and Secondary Education Act of 1965.

(b) The amount of an SEA's grant under this part for a State other than an Insular Area is determined by—

(1) Dividing the number of handicapped children in that State by the total number of handicapped children in all States submitting approvable applications under this part; and

(2) Multiplying that fraction by the amount of funds available for grants under this part minus the amount reserved under paragraphs (c) and (d) of this section.

(c) The Secretary reserves up to one-half of one percent of the aggregate of the amounts available under this part for grants to Insular Areas. Funds reserved by the Secretary for the Insular Areas are allocated proportionately among them on the basis of the number of children ages three through twenty-one in each Insular Area. However, no Insular Area may receive less than $15,000, and allocations within these jurisdictions are ratably reduced, if necessary, to ensure that each Insular Area receives at least that amount. Allocations within these jurisdictions are further ratably reduced if the amount reserved is insufficient to provide $15,000 to each Insular Area.

(d) From any appropriation enacted after September 30, 1986, the Secretary reserves up to 1.25 percent of the aggregate amount available under this part for a grant to the Secretary of the Interior to be used on reservations served by schools operated for Indian children by the Department of the Interior.

(20 U.S.C. 1406)

Reg. 304.21 Reallocation of excess funds.

The Secretary may reallocate funds—or portions of those funds—made available to the Secretary of the Interior or to a State educational agency under this part if the Secretary determines that the Secretary of the Interior or the State educational agency cannot use the funds in a manner consistent with the requirements of applicable statutes and the regulations in this part. Any reallocation is made on the same basis as grants are determined under Reg. 304.20.

(20 U.S.C. 1406)

Regs. 304.22-304.29 [Reserved]

Subpart D—How Does An LEA Or IEU Apply To An SEA For A Subgrant?

Reg. 304.30 Submission of an application to the SEA.

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA.

(20 U.S.C. 1406, 3474(a))

Reg. 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part.

(20 U.S.C. 1406, 3474(a)

Regs. 304.32-304.39 [Reserved]

Subpart E—How Does An SEA Make A Subgrant?

Reg. 304.40 Amount of a subgrant to an LEA or IEU.

(a) The SEA shall determine the amount of a subgrant to an LEA or IEU based on—

(1) The size, scope, and quality of the proposed project; and

(2) Any other relevant criteria developed by the SEA and included in the SEA application approved by the Secretary.

(b) The SEA may establish minimum and maximum amounts for subgrants.

(20 U.S.C. 1406)

Reg. 304.41 Reallocation of excess funds.

(a) The SEA may reallocate funds provided for subgrants under this part if an LEA or IEU cannot use the funds in a manner consistent with the requirements of Section 607 of the Education of the Handicapped Act and the requirements in this part.

(b) The SEA shall reallocate funds in accordance with the criteria and priorities for applying subgrants in its approved application.

(20 U.S.C. 1406)

Regs. 304.42-304.49 [Reserved]

Subpart F—What Conditions Must Be Met By An SEA, LEA, Or IEU?

Reg. 304.50 Standards for the removal of architectural barriers.

The alteration of existing buildings and equipment under this part must be done consistently with standards adopted by the General Services Administration (GSA) under Pub. L. 90-480, the Architectural Barriers Act of 1968. However, the dimensions set out in those standards may be modified as appropriate considering the age groups of the individuals who will use the buildings or equipment.

Note: On August 7, 1984, the GSA adopted new standards under the Architectural Barriers Act (49 FR 31528) and incorporated them by reference at 41 CFR 101-19.603 (49 FR 31625).

(20 U.S.C. 1406)

Reg. 304.51 Project priorities.

(a) An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of handicapped children and individuals from school to work.

(b) The Secretary encourages States to use their funds for activities that will—

(1) Make available to handicapped children the variety of educational programs and services available to nonhandicapped children in the area served by the LEA or IEU;

(2) Provide nonacademic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in these services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEUs.

(20 U.S.C. 1406)

Reg. 304.52 Project requirements.

To the extent practicable, funds made available under this part that are appropriated under Pub. L. 98-8 must be utilized to create new employment opportunities for the unemployed, as required by Pub. L. 98-8, Section 101(c).

(Pub.L. 98-8, Sec. 101(c); 97 Stat. 31-32 (1983))

Reg. 304.53-304.59 [Reserved]

Subpart G—What Are The Administrative Responsibilities Of An SEA?

Reg. 304.60 Amount available for SEA administration.

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part.

(20 U.S.C. 1406)

Reg. 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of program and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEUs with respect to the requirements of this part.

(20 U.S.C. 1406)

Regs. 304.62-304.69 [Reserved]

REGIONAL RESOURCE AND FEDERAL CENTERS

(34 Code of Federal Regulations Part 305)

Subpart A—General

Reg.
305.1 What are the Regional Resource and Federal Centers?
305.2 Who is eligible to apply for an award under this program?
305.3 What regulations apply to this program?
305.4 What definitions apply to this program?
305.5-305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

305.10 What kinds of services are required under this part?
305.11 What is the composition of the regions?
305.13-305.19 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

305.30 May the Secretary require the Centers to give priority to certain services?
305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?
305.32-305.39 [Reserved]

Subpart E—What Conditions Must Be Met by the Recipient of an Award?

305.40 What additional activities must each Regional Resource Center perform?
305.41-305.49 [Reserved]

Authority: 20 U.S.C. 1421, unless otherwise noted.
[Source: 49 FR 25997, June 25, 1984, unless otherwise noted]

Subpart A—General

Reg. 305.1 What are the Regional Resource and Federal Centers?

(a) This program supports the establishment and operation of Regional Resource Centers that provide consultation, technical assistance, and training to State educational agencies, and through those State educational agencies, to local educational agencies and to other State agencies providing early intervention services. The purpose of this assistance is to aid these agencies in providing early intervention, special education, and related services to handicapped infants, toddlers, children, and youth, and their families.

(b) This program also supports the establishment and operation of a Federal Center that provides assistance to the Regional Resource Centers in the delivery of technical assistance focusing on national priorities established by the Secretary.

(20 U.S.C. 1421)
[53 FR 3525, Feb. 5, 1988]

Reg. 305.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this part through a grant to, or cooperative agreement or contract with—

(a) Institutions of higher education;
(b) Private nonprofit organizations;
(c) State educational agencies;
(d) Public agencies or;
(e) Combinations of these agencies and institutions, such as combinations including one or more local educational agencies within particular regions of the United States.

(20 U.S.C. 1421; 20 U.S.C. 3474(a))
[53 FR 3525, Feb. 5, 1988]

Reg. 305.3 What regulations apply to this program?

(a) The following regulations apply to grants and cooperative agreements for Regional Resource Centers:

(1) The regulations in this Part 305.

(2) The Education Department General Administrative Regulations (EDGAR) at Title 34 of the Code of Federal Regulations in—

(i) Part 74 (Administration of Grants);
(ii) Part 75 (Direct Grant Programs);
(iii) Part 77 (Definitions that Apply to Department Regulations);
(iv) Part 78 (Education Appeal Board); and
(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 apply to contracts for Regional Resource and Federal Centers.

(20 U.S.C. 1421; 20 U.S.C. 3474(a))
[53 FR 3525, Feb. 5, 1988]

Reg. 305.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Award
Budget period
Contract
EDGAR
Fiscal Year
Grant
Grant period
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secretary
State
State educational agency

(20 U.S.C. 1421; 20 U.S.C. 3474(a))

Regs. 305.5-305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

Reg. 305.10 What kinds of services are required under this part?

Each Regional Resource Center shall—

(a) Assist State educational agencies, through services such as consultation, technical assistance, and training, to provide more effectively special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(b) Assist in identifying and solving persistent problems in providing quality special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(c) Assist in developing, identifying, and replicating successful programs and practices that will improve special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(d) Gather and disseminate information to all State educational agencies in the region and coordinate activities with other Regional Resource Centers and with other relevant projects conducted by the Department;

(e) Assist in the improvement of information dissemination to, and training activities for, professionals and parents of handicapped infants, toddlers, children, and youth; and

(f) Provide information to and training for agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants and cooperative agreements under this part and Parts D through G of the Act.

(20 U.S.C. 1421)
[53 FR 3525, Feb. 5, 1988]

Reg. 305.11 What is the composition of the regions?

The Secretary establishes the following regions:

(a) Region 1: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey.

(b) Region 2: Maryland, Delaware, Virginia, West Virginia, Washington, D.C., Kentucky, Tennessee, North Carolina, and South Carolina.

(c) Region 3: Georgia, Alabama, Florida, Mississippi, Puerto Rico, the Virgin Islands, New Mexico, Texas, Oklahoma, Arkansas, and Louisiana.

(d) Region 4: Illinois, Ohio, Indiana, Pennsylvania, Wisconsin, Minnesota, and Michigan.

(e) Region 5: Montana, Wyoming, North Dakota, South Dakota, Utah, Colorado, Nebraska, Kansas, Iowa, Missouri, and the Bureau of Indian Affairs.

(f) Region 6: Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, Guam, American Samoa, Hawaii, and the Commonwealth of the Northern Mariana Islands.

(20 U.S.C. 1421)
[49 FR 25997, June 25, 1984, as amended at 53 FR 3525, Feb. 5, 1988]

Regs. 305.12-305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Reg. 305.30 May the Secretary require the Centers to give priority to certain services?

For any fiscal year, the Secretary may, in the application notice, require the Centers to give priority to one or more of the services listed in Reg. 305.10.

(20 U.S.C. 1421)

Reg. 305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum number of points for each criterion is stated in parentheses. The maximum score for all of the criteria is 100 points.

(a) *Need for the project.* (5 points)

(1) The Secretary reviews each application for information that shows the need for a Center in the region to be served by the applicant.

(2) In making this determination, the Secretary considers information that shows the support for the applicant's project by the agencies to be served by the project.

(b) *Capability of applicant.* (5 points)

(1) The Secretary reviews each application for information that shows the capability of the applicant to fulfill the responsibilities of a Center under this part.

(2) In making this determination, the Secretary considers evidence of relevant experience which demonstrates the capacity to provide technical assistance to State educational agencies, commitment to the accomplishment of the project, and timely completion of previous comparable work.

(c) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan and operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(d) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) and (2) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary review each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are qualifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1421)

Regs. 305.32-305.39 [Reserved]

Subpart E—What Conditions Must Be Met by the Recipient of an Award?

Reg. 305.40 What additional activities must each Regional Resource Center perform?

Each Regional Resource Center shall—

(a) Report a summary of materials produced or developed in the manner and at the time the Secretary may establish; and

(b) Assist in the evaluation of the effectiveness of Regional Resource Center activities through cooperation with other projects under this part and with other appropriate projects such as the program evaluations under section 627 of the Act.

(c) Assure that the services provided are consistent with the priority needs identified by the States served by the center and with the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Act.

(20 U.S.C. 1421)
[49 FR 25997, June 25, 1984, as amended at 53 FR 3525, Feb. 5, 1988]

Regs. 305.41-305.49 [Reserved]

SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

(34 Code of Federal Regulations Part 307)

Subpart A—General

Reg.
307.1 What is the Services for Deaf-Blind Children and Youth program?
307.2 Who is eligible to apply for an award under the Services for Deaf-Blind Children and Youth program?
307.3 What regulations apply to the Services for Deaf-Blind children and Youth program?
307.4 What Definitions apply to the Services for Deaf-Blind Children and Youth program?
307.5-307.9 [Reserved]

Subpart B—What Types Of Projects Does The Secretary Assist Under This Program?

307.10 What types of activities are considered for support under this part?
307.11 What types of services to deaf-blind children and youth and technical assistance are considered for support under this part?
307.12 What types of technical assistance to grantees under Reg. 307.11 are considered for support under this part?
307.13 What types of technical assistance for transitional services are considered for support under this part?
307.14 [Removed]
307.15 [Removed]
307.16-307.19 [Reserved]

Subpart C—How Does One Apply For A Grant?

307.20 [Removed]
307.21-307.29 [Reserved]

Subpart D—How Does The Secretary Make A Grant?

307.30 What priorities are considered for support by the Secretary?
307.31 How does the Secretary determine the amount of an award under Reg. 307.11
307.32 How does the Secretary evaluate an application?
307.33 What criteria does the Secretary use to evaluate an application?
307.34 What procedures does the Secretary use if more than one application for an award under Reg. 307.11 proposes to serve the same State?
307.35 What are the selection criteria used to evaluate an application under Reg. 307.10(d)?
307.36 What are the selection criteria used to evaluate an application under Reg. 307.12 or Reg. 307.13?
307.32-307.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee Under This Program?

307.40 [Removed]
307.41 What advisory committees are to be established under this program?
307.42 [Removed]
307.43-307.49 [Reserved]

(Authority: 20 U.S.C. 1422, unless otherwise noted.)
[Source: 40 FR 7414, Feb. 20, 1975; 45 FR 77368, Nov. 21, 1980; 49 FR 28364, July 11, 1984; 54 FR 15310, April 17, 1989, unless otherwise noted]

Subpart A—General

Reg. 307.1 What is the Services for Deaf-Blind Children and Youth program?

This program supports projects that enhance services to deaf-blind children and youth, particularly by providing technical assistance to State educational agencies and others who are involved in the education of deaf-blind children and youth.

(20 U.S.C. 1422)

Reg. 307.2 Who is eligible to apply for an award under the Services for Deaf-Blind Children and Youth program?

Public or nonprofit agencies, institutions, or organizations may apply for an award under this part.

(20 U.S.C. 1422)

Reg. 307.3 What regulations apply to the Services for Deaf-Blind Children and Youth program?

The following regulations apply to this program:

(a) The regulations in this Part 307.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions);
(4) Part 78 (Education Appeal Board); and
(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1422; 20 U.S.C. 3474(a))

Reg. 307.4 What Definitions apply to the Services for Deaf-Blind Children and Youth program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300 and Part 315.* The following terms used in this part are defined in 34 CFR Part 300 or Part 315:

Counseling services (Reg. 300.13(b)(2))
Deaf-blind (Reg. 300.5(b)(2))
Evaluation (Reg. 300.500(c))
Free appropriate public education (Reg. 300.4)
Handicapped children (Reg. 300.5)
Parent (Reg. 300.10)
Parent counseling and training (Reg. 300.13(b)(6))
Public agency (Reg. 300.11)
Related services (Reg. 300.13)
Severely handicapped children and youth (Part 315.4(d))
Special education (Reg. 300.14)

(20 U.S.C. 1401(1), (16), (17), and (18), and 20 U.S.C. 1424).
[54 FR 15310, April 17, 1989]

Regs. 307.5-307.9 [Reserved]

Subpart B—What Types Of Projects Does The Secretary Assist Under This Program?

Reg. 307.10 What types of activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Services to deaf-blind children and youth and technical assistance to agencies, institutions, and organizations, as described in Reg. 307.11;

(b) Technical assistance to grantees under Reg. 307.11, as described in Reg. 307.12;

(c) Technical assistance for transitional services, as described in Reg. 307.13; and

(d) Extended school year educational or related service demonstration projects for severely handicapped children and youth, including children and youth who are deaf-blind, if those activities are provided during an interim period of at least four weeks between two regular school terms.

(20 U.S.C. 1422)
[54 FR 15310, April 17, 1989]

Reg. 307.11 What types of services to deaf-blind children and youth and technical assistance are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to support the following projects:

(1) Special education and related services, as well as vocational and transitional services, to deaf-blind children and youth to whom States are not obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act and to whom the State is not providing those services under some other authority. These services may include the following:

(i) Diagnosis and educational evaluation of children and youth at risk of being identified as deaf-blind.

(ii) Programs of adjustment, education, and orientation for deaf-blind children and youth.

(iii) Consultative, counseling, and training services for families of those deaf-blind children and youth being served under this part.

(iv) Preparation of a coordinated plan for each child and youth served, describing all the services provided under paragraphs (a)(1)(i) through (iii) of this section. These services must be in accordance with other federal and State programs.

(2) Technical assistance to public and private agencies, institutions, and organizations providing educational, transitional, vocational, early identification, and related services to deaf-blind children and youth, to assure that they may more effectively—

(i) Provide special education and related services, as well as vocational and transitional services, to those deaf-blind children and youth to whom they are obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act or some other authority;

(ii) Provide preservice or inservice training to paraprofessionals, professionals or related services personnel preparing to serve, or serving, deaf-blind children or youth;

(iii) Replicate successful, innovative approaches to providing educational or related services to deaf-blind children and youth;

(iv) Facilitate parental involvement in the education of their deaf-blind children and youth;

(v) Provide consultative and counseling services for professionals, paraprofessionals, parents, and others who play a direct role in the lives of deaf-blind children and youth, to enable them to understand the special problems of those children and youth, and to assist in the provision of appropriate services to those children and youth; and

(vi) Promote the integration of deaf-blind children and youth with other handicapped and nonhandicapped children and youth.

(3) The services described in paragraph (a)(1) of this section of deaf-blind children and youth to whom a State is obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act and to whom the State is providing those services under some other authority.

(b)(1) Each grantee under this section shall give priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section and to the provision of technical assistance as described in paragraph (a)(2) of this section.

(i) Give first priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section; and

(ii) Give second priority in the use of project funds to the provision of technical assistance to State educational agencies, as described in paragraph (a)(2) of this section.

(2) Any remaining funds may be used by the grantee, upon request of the State educational agency, for the services described in paragraph (a)(3) of this section.

(c) Each grantee under this section shall—

(1) Develop and implement procedures to evaluate the effectiveness of services to deaf-blind children and youth which it provides under paragraph (a)(1) of this section;

(2) Provide technical assistance to the public and private agencies, institutions, and organizations served under paragraph (a)(2) of this section in the development and implementation of procedures for evaluating the effectiveness of services they provide to deaf-blind children and youth; and

(3) Engage in on-going coordination with the State educational agency, the State's lead agency under Part H of the EHA, and other State agencies responsible for providing services to deaf-blind children and youth, in the provision of services under this section.

(d) For the purpose of making awards under Reg. 307.11, the Secretary may make awards for single or multi-State projects. Each State may be served through only one project.

(20 U.S.C. 1422)
[54 FR 15 310, April 17, 1989]

Region	States included in region
1	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.
2	Delaware, District of Columbia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.
3	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.
4	Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin.
5	Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.
6	Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, the Northern Mariana Islands, Oregon, the Trust Territory of the Pacific Islands, and Washington.

Reg. 307.12 What types of technical assistance to grantees under Reg. 307.11 are considered for support under this part?

(a) The Secretary may provide financial assistance under this part for projects that establish and support programs for the provision of technical assistance on the activities authorized under Reg. 307.11.

(b) Technical assistance services made available under this section must be requested by a grantee under Reg. 307.11 or a State educational agency, and may be extended at the request of the Reg. 307.11 grantee or a State educational agency to other agencies, institutions, and organizations providing services to deaf-blind children and youth, to—

(1) Enhance personnel training programs by, for example, making available the combined expertise of highly trained and experienced professionals from the fields of education for deaf-blind and severely handicapped children and youth;

(2) Apply effective and relevant educational research findings; and

(3) Replicate effective methodology and curricula in educating deaf-blind children and youth.

(c) Technical assistance services made available under this section are to be determined by mutual agreement between the Reg. 307.12 technical assistance grantee and the Reg. 307.11 grantee or the State education agency.

(20 U.S.C. 1422)
[54 FR 15310, April 17, 1989]

Reg. 307.13 What types of technical assistance for transitional services are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to provide technical assistance to State educational agencies in making available to deaf-blind youth, upon attaining the age of 22, programs and services to facilitate their transition from education to employment and other services such as vocational, independent living, and other postsecondary services.

(b) Each grantee under this section must provide each of the following services:

(1) Technical assistance to agencies, institutions, and organizations (in addition to State educational agencies) pro-

viding, or proposing to provide, transitional services to deaf-blind youth who have attained the age of 22.

(2) Training or inservice training to paraprofessionals or professionals serving, or preparing to serve, those youth, as well as training to their parents.

(3) Assistance in the development or replication of successful innovative approaches to providing rehabilitative, semi-supervised, or independent living programs.

(c) As used in this section, the term "transitional services" includes—

(1) Counseling, training, and other services to assist deaf-blind youth to adjust to work environments and employment options;

(2) Information concerning relevant public services available to assist deaf-blind youth in transition from educational to other services, including, recreational and leisure time resources, rehabilitative, semi-supervised, or independent living programs, and the procedures for assessing those services; and

(3) Assistance to relevant agencies in the development of individualized work-related plans for deaf-blind youth.

(d) Each grantee under this section shall develop and implement strategies to promote coordination between State and local agencies providing services to deaf-blind youth 22 years of age and older, including agencies providing rehabilitative, vocational, health, career planning and development, and social services, and agencies providing a range of supervised and unsupervised living options.

(e) Each grantee under this section shall assess the effectiveness of the project in facilitating the transition of deaf-blind children and youth from education to employment and other services such as vocational, independent living, and other postsecondary services.

(20 U.S.C. 1422)
[49 FR 28367, July 11, 1984]

Reg. 307.14 [Removed]

[54 FR 15310, April 17, 1989]

Reg. 307.15 [Removed]

[54 FR 15310, April 17, 1989]

Regs. 307.16-307.19 [Reserved]

Subpart C—How Does One Apply For A Grant?

Reg. 307.20 [Removed]

[54 FR 15310, April 17, 1989]

Regs. 307.21-307.29 [Reserved]

Subpart D—How Does The Secretary Make A Grant?

Reg. 307.30 What priorities are considered for support by the Secretary?

(a) The Secretary may select as annual priorities one or more of the types of projects listed in Reg. 307.10.

(b) The Secretary advises the public of these priorities through an application notice published in the *Federal Register.*

(20 U.S.C. 1422)
[49 FR 28367, July 11, 1984]

Reg. 307.31 How does the Secretary determine the amount of an award under Reg. 307.11

In determining the funding level for each award under Reg. 307.11 for a single or multi-State deaf-blind services project, the Secretary considers the following factors:

(a) The number of children and youth in the States the applicant proposes to serve.

(b) The number of deaf-blind children and youth in the State benefiting from services under Reg. 307.11(a)(1) and (2) in relation to the total number of such children in all States.

(c) The relative cost of providing services authorized under this part to deaf-blind children and youth in the States the applicant proposes to serve.

(d) The quality of the application submitted under this part evaluated on the basis of the criteria in Reg. 307.33.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1422)
[53 FR 19144, Dec. 6, 1988; 54 FR 15311, April 17, 1989]

307.32 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under Reg. 307.11 on the basis of the criteria in Reg. 307.33. If more than one eligible application is received on behalf of any State for an award under Reg. 307.11, the Secretary uses the procedures established in Reg. 307.34. The Secretary uses the selection criteria in Reg. 307.35 or 307.36 to evaluate applications submitted for other types of activities authorized under this part.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1422)
[54 FR 15311, April 17, 1989]

Reg. 307.33 What criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate the quality of an application submitted under Reg. 307.11. Each applicant may receive up to a total of 100 points. Each application will be evaluated based only on those factors of each criterion that relate to the service needs of the States the applicant proposes to serve.

(a) *Justification for the project, extent of need, and expected impact.* (15 points) The Secretary reviews each application to determine the justification for the proposed activities in each State, based on the extent of State need for and expected impact from the provision of services and technical assistance, including consideration of—

(1) The age, number, and location of deaf-blind children and youth in the State to whom the State is not obligated to provide a free appropriate public education under Part B of the EHA, to whom the State is not providing special educational and related services under some other authority, and to whom the applicant proposes to provide services;

(2) The specific actions needed for the provision of educational and related services to deaf-blind children and youth based on the State's plan for delivery of services to students with handicaps required under Parts B and H;

(3) The specific actions needed for the provision of technical assistance addressed by the project based on the State's plan for provision of technical assistance to providers of services to deaf-blind children and youth;

(4) The expected benefits to be gained by providing the educational and related services to deaf-blind children and youth to be served by the project, their parents and service providers; and

(5) The expected benefits to be gained by meeting the technical assistance needs of service providers to be assisted by the project.

(b) *Quality of services and technical assistance.* (40 points) The Secretary reviews each application to determine the quality of the plan to provide services and technical assistance in each State to be served, including—

(1) The quality of the design of the project for providing each of the educational and related services described under Reg. 307.11(a)(1), and for providing technical assistance as described under Reg. 307.11(a)(2);

(2) The extent to which the applicant's plan for providing services and technical assistance implements current research findings and exemplary practices including arranging for services that are age-appropriate for project participants, and providing for the maximum integration of deaf-blind children and youth in the least restrictive environment;

(3) How well the objectives of the project respond to the needs of deaf-blind children and youth in the State, their parents, and service providers;

(4) The extent to which the plan of management is effective and ensures proper and efficient provision of educational and related services and technical assistance, and reflects an analysis of the service needs of deaf-blind children and youth in the State;

(5) How well the objectives of the project relate to the purpose of the program;

(6) How the project will assist the State in developing and implementing the State's Comprehensive Systems of Personnel Development required under Parts B and H of EHA;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(8) The quality of the applicant's plan for providing consultative and training services for families of deaf-blind children and youth as described in Reg. 307.11(a)(1)(iii);

(9) The quality of the applicant's plan to involve parents in the development and delivery of appropriate services to their deaf-blind children and youth; and

(10) The extent to which services provided for children birth through two years of age meet the requirements of Part H of the EHA.

(c) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project for the provision of services to deaf-blind children and youth and technical assistance to agencies, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The experience among key personnel referred to in paragraph (c)(1) and (2) of this section, relevant to the provision of quality educational services to deaf-blind children and youth in less restrictive environments;

(4) The time that each person referred to in paragraphs (c)(1) and (2) of this section will commit to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

[Cross-reference: See 34 CFR 75.590 Evaluation by the grantee]

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine for technical assistance, and direct services where appropriate, in each State to be served, the extent to which—

(1) The budgets are adequate to support the activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(i) The time anticipated to be spent by each staff member for the provision of services described under Reg. 307.11(a)(1) and costs for contracted and consultative services, travel costs, and other direct costs;

(ii) The time anticipated to be spent by each staff member for the provision of technical assistance under Reg. 307.11(a)(2), and costs for contracted and consultative services, travel, and other related expenditures for technical assistance activities; and

(iii) The time anticipated to be spent for administrative services.

(20 U.S.C. 1422)

(f) *Coordination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for initiating and maintaining coordination in each State to be served with—

(1) Related activities funded from grants, contracts and cooperative agreements awarded under Parts C, D, E, F, and G of EHA; and

(2) Relevant agencies, organizations, and institutions having responsibility to deliver services to deaf-blind children and youth in the State, including State education agencies and other service providers under Parts B and H of the EHA and section 1221 *et seq.* of Title I of the Elementary and Secondary Education Act of 1965.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for disseminating significant project information within the State(s) to providers of services to deaf-blind children and youth.

(20 U.S.C. 1422)
[54 FR 15311, April 17, 1989]
[OMB Control No. 1820-0028 expires 9-89]

Reg. 307.34 What procedures does the Secretary use if more than one application for an award under Reg. 307.11 proposes to serve the same State?

If more than one eligible application is received on behalf of any State for an award under Reg. 307.11, the Secretary applies the selection criteria in Reg. 307.33 and selects the highest ranked application for funding.

(20 U.S.C. 1422)
[54 FR 15312, April 17, 1989]

Reg. 307.35 What are the selection criteria used to evaluate an application under Reg. 307.10(d)?

The Secretary uses the selection criteria in 34 CFR 315.33 to evaluate an application for an extended school year project under Reg. 307.10(d).

(20 U.S.C. 1422)
[54 FR 15312, April 17, 1989]
[OMB Control No. 1820-0028 expires 9-89]

Reg. 307.36 What are the selection criteria used to evaluate an application under Reg. 307.12 or Reg. 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under Reg. 307.12 or Reg. 307.13:

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist in meeting national needs in the provision of services to deaf-blind children and youth, including consideration of—

(1) The extent and importance of the needs addressed by the project;

(2) The expected benefits to deaf-blind children and youth served by the project, their parents, and service providers; and

(3) The national significance of the project in terms of potential benefits to deaf-blind children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

[Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.]

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(20 U.S.C. 1422)
[54 FR 15312, April 17, 1989]
[OMB Control No. 1820-0028 expires 9-89]

Regs. 307.43-307.49 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee Under This Program?

Reg. 307.40 [Removed]

[53 FR 49145, Dec. 6, 1988; 54 FR 15313, April 17, 1989]

Reg. 307.41 What advisory committees are to be established under this program?

Each grantee under this part shall establish and maintain an advisory committee for the project. Each committee must include at least one parent of a deaf-blind child or youth, and representative of the State educational agency in the State in which the grantee is located, a limited number of professionals with training and experience in serving deaf-blind children and youth, and other individuals representing related agencies and organizations. These committees may participate in such activities as—

(a) Planning, development, and operation of the project; and

(b) Dissemination of information regarding the project's activities.

(20 U.S.C. 1422)
[49 FR 28368, July 11, 1984]

Reg. 307.42 [Removed]

[54 FR 15313, April 17, 1989]

Regs. 307.43-307.49 [Reserved]

HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

(34 Code of Federal Regulations Part 309)

Subpart A—General

Reg.
309.1 What is the Handicapped Children's Early Education Program (HCEEP)?
309.2 Who is eligible for an award?
309.3 What activities may the Secretary fund?
309.4 What regulations apply to this program?
309.5 What definitions apply to this program?

Subpart B—How Does One Apply For An Award?

309.10 What separate applications must an applicant submit?
309.11 How does the Secretary select and announce funding priorities under the program?

Subpart C—How Does The Secretary Make An Award?

309.20 How does the Secretary evaluate an application?
309.21 What selection criteria does the Secretary use?
309.22 Are awards for experimental, demonstration, and outreach projects geographically dispersed?

Subpart D—What Conditions Must Be Met After An Award By Experimental, Demonstration, And Outreach Projects?

309.30 What conditions must be met by recipients of experimental, demonstration, and outread projects?
309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

(Authority: 20 U.S.C. 1423, unless otherwise noted.)
[Source: 52 FR 29817, Aug. 11, 1987, unless otherwise noted]

Subpart A—General

Reg. 309.1 What is the Handicapped Children's Early Education Program (HCEEO)?

The HCEEP supports activities that are designed—

(a) To address the special problems of children with handicaps, birth through age eight, and their families; and

(b) To assist State and local entities in expanding and improving programs and services for these children and their families.

(20 U.S.C. 1423)

Reg. 309.2 Who is eligible for an award?

Public agencies and nonprofit private organizations are eligible for a grant or cooperative agreement under this part. In addition, profitmaking organizations are eligible under Reg. 309.3(e) and (f).

(20 U.S.C. 1423)

Reg. 309.3 What activities may the Secretary fund?

The Secretary may provide financial assistance in the form of a grant or cooperative agreement under this part to support the following activities:

(a) *Experimental projects.* These projects support the design of investigative models that compare alternative and innovative practices related to early intervention, preschool, and early education services for children with handicaps and their families.

(b) *Demonstration projects.* These projects assist in developing and implementing preschool and early intervention program practices that establish specific strategies and products worthy of dissemination and replication.

(c) *Outreach projects.* These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to children with handicaps and their families.

(d) *Research institutes.* These institutes are designed to carry on sustained research to generate and disseminate new information on preschool and early intervention programs.

(e) *Research projects.* These projects are designed to identify and meet the full range of special needs of children covered under this part.

(f) *Training projects.* These projects support the training of personnel for programs specifically designed for children with handicaps.

(20 U.S.C. 1423)

Reg. 309.4 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions that Apply to Department Regulations);
(4) Part 78 (Education Appeal Board); and
(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(b) The regulations in this Part 309.

(20 U.S.C. 1423)

Reg. 309.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Fiscal year
Grant
Local educational agency
Nonprofit
Nonpublic
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300. The section of Part 300 that contains the definition is given in parentheses:

Handicapped children (Reg. 300.5)
Include (Reg. 300.6)
Parent (Reg. 300.10)
Related services (Reg. 300.13)
Special education (Reg. 300.14)

(c) *Other definitions.* As used in this part, "Act" means the Education of the Handicapped Act, as amended.

(20 U.S.C. 1423)

Subpart B—How Does One Apply For An Award?

Reg. 309.10 What separate applications must an applicant submit?

Applicants for assistance under this part must submit a separate application for each activity in Reg. 309.3 that is announced for competition.

(20 U.S.C. 1423)

Reg. 309.11 How does the Secretary select and announce funding priorities under the program?

The Secretary may establish as a priority any activity in Reg. 309.3.

(20 U.S.C. 1423)

Subpart C—How Does The Secretary Make An Award?

Reg. 309.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under this part on the basis of the criteria in Reg. 309.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1423)

Reg. 309.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications unless, with regard to training projects, he determines that the selection criteria in 34 CFR Part 318 are more appropriate:

(a) *Importance.* (15 points)
(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.
(2) The Secretary considers—
(i) The significance of the problem or issue to be addressed;
(ii) The extent to which the project is based on previous research findings related to the problem or issue;
(iii) The numbers of individuals who will benefit; and
(iv) How the project will address the identified problem or issue.
(b) *Impact.* (15 points)
(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.
(2) The Secretary considers—
(i) The contribution that project findings or products will make to current knowledge and practice;
(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and
(iii) The extent to which findings or products are replicable, if appropriate.
(c) *Technical soundness.* (35 points)
(1) The Secretary reviews each application to determine the technical soundness of the project plan.

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities,

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part.

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timeliness for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objectives and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

(Approved by the Office of Management and Budget under control number 1820-0028).

(20 U.S.C. 1423)

Reg. 309.22· Are awards for experimental, demonstration, and outreach projects geographically dispersed?

To the extent feasible, the Secretary, in addition to using the selection criteria in Reg. 309.21, geographically disperses awards for experimental, demonstration, and outreach projects throughout the Nation in urban as well as rural areas.

(20 U.S.C. 1423(a)(3))

Subpart D—What Conditions Must Be Met After An Award By Experimental, Demonstration, And Outreach Projects?

Reg. 309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?

(a) Experimental, demonstration, and outreach projects must include services and activities that are designed to—

(1) Facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of children with handicaps, birth through age eight;

(2) Encourage the participation of the parents of those children in the development and operation of projects under this part;

(3) Acquaint the community in which the project is located with the problems and potentialities of those children;

(4) Offer training about exemplary models and practices to State and local personnel who provide services to children with handicaps, birth through age eight; and

(5) Support the adoption of exemplary models and practices in States and local communities.

(b) Experimental, demonstration, and outreach projects must be coordinated with State and local educational agencies, and appropriate public and private health and social service agencies, in order to—

(1) Inform those agencies of the nature and purposes of the assisted project's activities or services; and

(2) Provide opportunities for the project staff to coordinate their activities with staff of other agencies.

(20 U.S.C. 1423(a)(1), (2))

Reg. 309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

(a) Federal financial participation for an experimental, demonstration, or outreach project may not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project.

(b) The Secretary may waive the matching requirement in paragraph (a) of this section in the case of an arrangement entered into with governing bodies of Indian tribes located on Federal or State reservations and with consortia of those bodies if they are able to demonstrate that insufficient resources are available.

(20 U.S.C. 1423(a)(4))

PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

(34 Code of Federal Regulations Part 315)

Subpart A—General

Reg.
315.1 What is the Program for Severely Handicapped Children?
315.2 Who is eligible to apply for a grant under this program?
315.3 What regulations apply to this program?
315.4 What definitions apply to this program?
315.5-315.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

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315.11 What types of research activities are considered for support by the Secretary under this part?
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Subpart D—How Does The Secretary Make A Grant?

315.30 How does the Secretary select and announce funding priorities under this program?
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315.40 What coordination requirement(s) must be met by a grantee?
315.41-315.49 [Reserved]

(Authority: 20 U.S.C. 1424, unless otherwise noted.)
[Source: 49 FR 28021, July 9, 1984, unless otherwise noted.]

Subpart A—General

Reg. 315.1 What is the Program for Severely Handicapped Children?

This program supports research, development or demonstration, training, and dissemination activities which, consistent with the purpose of Part C of the Education of the Handicapped Act, meet the unique educational needs of severely handicapped children and youth.

(20 U.S.C. 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]

Reg. 315.2 Who is eligible to apply for a grant under this program?

Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

(20 U.S.C. 1424)

Reg. 315.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 315.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions); and
(4) Part 78 (Education Appeal Board).

(20 U.S.C. 1424, 20 U.S.C. 3474(a))

Reg. 315.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal Year

Grant
Grantee
Nonprofit
Preschool
Private
Project
Public
Recipient
Secretary
State

(20 U.S.C. 1424, 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The term "parent" as used in this part is defined in 34 CFR 300.10.

(c) *Handicapped children and youth.* The term "handicapped children and youth" as used in this part means those children and youth evaluated as being mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(20 U.S.C. 1401(1))

(d) *Severely handicapped children and youth.*

(1) As used in this part, the term "severely handicapped children and youth" refers to handicapped children and youth who, because of the intensity of their physical, mental, or emotional problems, need highly specialized educational, social, psychological, and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment.

(2) The term includes those children and youth who are classified as seriously emotionally disturbed (including children and youth who are schizophrenic), autistic, profoundly and severely mentally retarded, and those with two or more serious handicapping conditions, such as the deaf-blind, mentally retarded-blind, and the cerebral-palsied deaf.

(3) Severely handicapped children and youth—

(i) May experience severe speech, language, and/or perceptual-cognitive deprivations, and evidence abnormal behaviors such as—

(A) Failure to respond to pronounced social stimuli;

(B) Self-mutilation;

(C) Self-stimulation;

(D) Manifestation of intense and prolonged temper tantrums; and

(E) The absence of rudimentary forms of verbal control; and

(ii) May also have extremely fragile physiological conditions.

(20 U.S.C. 1424)

Regs. 315.5-315.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

Reg. 315.10 What types of activities are considered for support by the Secretary under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Research to identify and meet the full range of special needs of severely handicapped children and youth, as described in Reg. 315.11.

(b) The development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of severely handicapped children and youth, as described in Reg. 315.12.

(c) Training of professional and allied personnel engaged or preparing to engage in programs specifically designed for severely handicapped children and youth, as described in Reg. 315.13.

(d) Dissemination of materials and information about practices found effective in working with severely handicapped children and youth, as described in Reg. 315.14.

(20 U.S.C. 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]

Reg. 315.11 What types of research activities are considered for support by the Secretary under this part?

(a) The Secretary may provide financial assistance under this part for the following research activities:

(1) Research to identify and meet the full range of special needs of severely handicapped children and youth.

(2) Research to identify and meet the instructional or counseling needs of parents, professionals, and others involved in the provision of services to severely handicapped children and youth, for the purpose of facilitating the delivery and improving the quality of these services.

(b) Each application for assistance under this part must—

(1) Specifically describe and justify the research activities which the applicant proposes to undertake;

(2) Fully describe how the applicant will develop and validate the effectiveness of procedures for applying the project's research findings to the provision of improved direct services to severely handicapped children and youth.

(20 U.S.C 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]

Reg. 315.12 What types of development or demonstration activities are considered for support by the Secretary under this part?

(a) The Secretary may provide financial assistance under this part for one or more of the following development and demonstration activities to meet the needs of severely handicapped children and youth.

(1) Review, analysis, and evaluation of current educational practices and research findings.

(2) Diagnosis and evaluation of the learning capacities and limitations of severely handicapped children and youth and the identification of their specific learning needs and problems.

(3) Design and demonstration of innovative procedures for addressing the identified needs of severely handicapped children and youth in a variety of settings.

(4) Evaluation of the progress and achievement of severely handicapped children and youth who participate in project activities.

(b) Each application for assistance under this part must—

(1) Justify the need for the development or demonstration activities which the applicant proposes to undertake, particularly in consideration of related development or demonstration activities in the nation where applicable;

(2) Describe the nature and extent of the impact which the proposed activities are expected to have on severely handicapped children and youth who will be served by the project; and

(3) Describe the impact, in terms of replicability, that the activities are expected to have upon children and youth not served by the project.

(20 U.S.C. 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]

Reg. 315.13 What types of training activities are considered for support by the Secretary under this part?

The Secretary may provide financial assistance under this part to support training activities that meet the following requirements:

(a) *Training*. Training of professional and allied personnel may include staff meetings, seminars, workshops, demonstrations, and related activities.

(b) *Participants*. Participants in training activities may include present and potential project personnel and other teachers, administrators, child care workers, parents, and teacher aides.

(c) *Stipends*. The Secretary, on a case-by-case basis, may authorize the payment of stipends for inservice training in an amount the Secretary determines appropriate for a particular training activity.

(d) Each application for assistance under this part must—

(1) Justify the need for the training activities that the applicant proposes to undertake; and

(2) Describe the nature and extent of the impact that the proposed activities are expected to have on severely handicapped children and youth who will ultimately be served by the individuals who receive the training.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]

Reg. 315.14 What types of dissemination activities are considered for support by the Secretary under this part?

The Secretary may provide assistance under this part for dissemination activities including distribution of materials and information to educational institutions, parents, the general public, and members of professions engaged in the field of the education of the severely handicapped.

(20 U.S.C. 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]

Regs. 315.15-315.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make A Grant?

Reg. 315.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the activities listed in Regs. 315.10-315.14.

(b) The Secretary advises the public of these priorities through a notice published in the Federal Register.

(c) The Secretary may establish other priorities through publication of one or more notices in the Federal Register in accordance with 34 CFR 75.105, *Annual priorities*.

(20 U.S.C. 1424)
[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987]FL

Reg. 315.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in Regs. 315.32 or 315.33.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1424)
[52 FR 31958, Aug. 24, 1987]

Reg. 315.32 What are the selection criteria used to award a research grant?

The Secretary uses the following criteria to evaluate an application for a research project described in Reg. 315.11:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies or provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) ,OExperience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objective of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points)EMThe e Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1424)
[52 FR 31958, Aug. 24, 1987; 53 FR 49141, Dec. 6, 1988]

Reg. 315.33 What are the selection criteria used to award a grant for a demonstration, training, or dissemination project?

The Secretary uses the following criteria to evaluate an application for a demonstration project under Reg. 315.12 and a training project under Reg. 315.13. The Secretary also uses these criteria to evaluate a dissemination project under Reg. 315.14, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points).

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1424)
[52 FR 31958, Aug. 24, 1987; 53 FR 49141, Dec. 6, 1988]

Reg. 315.34 What other factors are considered by the Secretary in making a grant?

To the extent feasible, the Secretary supports activities that are geographically dispersed throughout the Nation in urban and rural areas.

(20 U.S.C. 1424)
[52 FR 31958, Aug. 24, 1987]

Regs. 315.35-315.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee Under This Program?

Reg. 315.40 What coordination requirement(s) must be met by a grantee?

Each recipient shall coordinate the activities assisted under this part with similar activities assisted under other sections of the Act.

(20 U.S.C. 1424)

Regs. 315.41-315.49 [Reserved]

TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED— PARENT TRAINING AND INFORMATION CENTERS

(34 Code of Federal Regulations Part 316)

Subpart A—General

Reg.	
316.1	What is the purpose of this program?
316.2	Who is eligible for an award?
316.3	What activities may the Secretary fund?
316.4	What regulations apply to this program?
316.5	What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does The Secretary Make An Award

316.20	How does the Secretary evaluate an application?
316.21	What selection criteria does the Secretary use?
316.22	What additional factors does the Secretary consider?

Subpart D—What Conditions Must A Grantee Meet?

316.30	What types of services are required?
316.31	What are the duties of the board of directors or special governing committee of a parent organization?

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.
[Source: 53 FR 45732, Nov. 10, 1988, unless otherwise noted]

Subpart A—General

Reg. 316.1 What is the purpose of this program?

(a) This program supports grants to parent organizations for the purpose of providing training and information to parents of children and youth with handicaps and to persons who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children and youth.

(b) Parent training and information programs may, at a grantee's discretion, include State or local educational agency personnel if that participation will further an objective of the program assisted by the grant.

(20 U.S.C. 1431(c))

Reg. 316.2 Who is eligible for an award?

Parent organizations are eligible to receive grants under this program.

(20 U.S.C. 1431(c))

Reg. 316.3 What activities may the Secretary fund?

Parent training and information projects assisted under this program must be designed to assist parents to—

(a) Understand the nature and needs of the handicapping conditions of their children and youth;

(b) Provide follow-up support for their children and youth's educational programs;

(c) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(d) Participate fully in educational decision-making processes, including the development of their child or youth's individualized education program;

(e) Obtain information about the programs, services, and resources available to their children and youth; and the degree to which the programs, services, and resources are appropriate to meet the needs of their children and youth; and

(f) Understand the provisions for educating children and youth with handicaps under Part B of the Act.

(20 U.S.C. 1431(c))

Reg. 316.4 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 316.

(20 U.S.C. 1431(c))

Reg. 316.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant

Application
Award
Department
EDGAR
Fiscal year
Local educational agency
Nonprofit
Private
Project
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300:

Individualized education program (Reg. 300.340)
Parent (Reg. 300.10)
Related services (Reg. 300.13)
Special education (Reg. 300.14)

(c) *Other definitions specific to 34 CFR Part 316.* The following terms used in this part are defined as follows:

"Act" means the Education of the Handicapped Act (EHA).

"Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities, and who by reason thereof need special education and related services.

"Parent organization" means a private nonprofit organization that is governed by a board of directors of which a majority of the members are parents of children and youth with handicaps, and that includes professionals in the field of special education and related services who serve children and youth with handicaps; or if the nonprofit private organization does not have such a board, such organization shall have a membership representing the interests of individuals with handicaps and a special governing committee, a majority of the members of which are parents of children and youth with handicaps, and which includes professionals in the fields of special education and related services. The organization, in providing training and information under this part, must serve the parents of children and youth representing the full range of handicapping conditions. The organization must demonstrate the capacity and expertise to conduct the authorized training and information activities effectively.

(20 U.S.C. 1431(c))

Subpart B—[Reserved]

Subpart C—How Does The Secretary Make An Award?

Reg. 316.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in Reg. 316.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1431(c))

Reg. 316.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of present and projected needs.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents; and

(2) The present and projected training and information needs for personnel to work with parents of children and youth with handicaps.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Understand the nature and needs of the handicapping conditions of their children and youth;

(2) Provide follow-up support for their children and youth's educational programs;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decision-making processes, including the development of their child or youth's individualized educational program;

(5) Obtain information about the programs, services, and resources available to their children and youth and the degree to which the programs, services, and resources are appropriate to meet the needs of their children and youth; and

(6) Understand the provisions for educating children and youth with handicaps under Part B of the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(20 U.S.C. 1431(c))

Reg. 316.22 What additional factors does the Secretary consider?

In addition to the criteria in Reg. 316.21, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for award, the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children and youth with handicaps in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for award, the Secretary gives priority to applications that propose to serve unserved areas.

(20 U.S.C. 1431(c))

Subpart D—What Conditions Must A Grantee Meet?

Reg. 316.30 What types of services are required?

(a) Projects must be designed to meet the unique training and information needs of parents of children and youth with handicaps who live in the area to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) A grantee shall consult with appropriate agencies that serve or assist children and youth with handicaps in the geographic areas served by the project.

(20 U.S.C. 1431(c))

Reg. 316.31 What are the duties of the board of directors or special governing committee of a parent organization?

The recipient's board of directors or special governing committee as described in Reg. 316.5 must meet at least once in each calendar quarter to review the parent training and information activities under the grant.

(20 U.S.C. 1431(c))

TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED— CAREERS IN SPECIAL EDUCATION AND EARLY INTERVENTION

(34 Code of Federal Regulations Part 318)

Subpart A—General

Reg.
318.1 What is the purpose of this program?
318.2 Who is eligible for an award?
318.3 What activities may the Secretary fund?
318.4 What priorities may the Secretary establish?
318.5 What regulations apply to this program?
318.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does The Secretary Make An Award?

318.20 How does the Secretary evaluate an application?
318.21 What selection criteria does the Secretary use?
318.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must A Grantee Meet?

318.30 Is student financial assistance authorized?
318.31 What are the student financial assistance criteria?
318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

(Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.)
[Source: 54 FR 45734, Nov. 10, 1988, unless otherwise noted.]

Subpart A—General

Reg. 318.1 What is the purpose of this program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with handicaps through—

(a) The provision of awards to support the preservice training of personnel for careers in special education and early intervention in—

(1) Special education teaching, including speech-language pathology, audiology, and adaptive physical education;

(2) Related services to children and youth with handicaps in educational settings;

(3) Special education supervision and administration;

(4) Special education research; and

(5) Training of special education personnel and other personnel providing special services and preschool and early intervention services for infants, toddlers, children, and youth with handicaps; and

(b) Special projects designed to develop and demonstrate new approaches for the preservice training described in Reg. 318.3(a) and also for inservice training activities.

(20 U.S.C. 1431(a) and (b) and 1434)

Reg. 318.2 Who is eligible for an award?

(a) The following agencies are eligible for assistance under this part:

(1) Institutions of higher education and other appropriate nonprofit agencies are eligible under Reg. 318.1(a); and

(2) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under Reg. 318.1(b).

(b) In order to receive a preservice training grant under Reg. 318.3, an institution or agency must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless the grant is for the purpose of assisting the applicant agency or institution to meet those standards.

(20 U.S.C. 1431(a)(2))

Reg. 318.3 What activities may the Secretary fund?

The Secretary supports three types of projects under this program:

(a) Special projects designed to include—

(1) Development, evaluation, and distribution of innovative approaches to personnel preparation;

(2) Development of materials to prepare personnel to educate or provide early intervention services to infants, toddlers, children, and youth with handicaps; and

(3) Other projects of national significance for the preparation of personnel needed to serve infants, toddlers, children, and youth with handicaps.

(b) Development of new programs designed to establish and increase the capacity and quality of preservice training; and

(c) Improvement of existing programs designed to maintain and upgrade the capacity and quality of preservice training.

(20 U.S.C. 1431(a) and (b))

Reg. 318.4 What priorities may the Secretary establish?

(a) Projects supported under this program that meet a priority as described in paragraph (b) or (c) of this section may provide training to degree, nondegree, certified, and noncertified personnel, except that doctoral and post-doctoral preparation may be supported only under the priorities described in paragraphs (b)(3), (b)(4), and (b)(8) of this section.

(b) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of personnel for careers in special education and early intervention.* This priority supports projects under Regs. 318.3(b) and (c) that are designed to provide preservice training of personnel for careers in special education and early intervention, or supervisors of those personnel. The priority includes the preparation of special teachers of infants, toddlers, children, and youth with handicaps, special education administrators and supervisors, speech-language pathologists, audiologists, adaptive physical educators, vocational educators, and infant intervention specialists.

(2) *Preparation of related services personnel.* This priority supports projects under Regs. 318.3(b) and (c) that are designed to provide preservice preparation of individuals who provide developmental, corrective, and other supportive services that assist infants, toddlers, children, and youth with handicaps to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, health service providers, physical therapists, occupational therapists, and other related services personnel.

(3) *Preparation of leadership personnel.* This priority supports projects under Sec. 318.3(b) and (c) that are designed to provide preservice doctoral and post-doctoral preparation of professional personnel such as administrators, supervisors, researchers, and teacher trainers.

(4) *Preparation of personnel for transition of youth with handicaps to adult and working life.* This priority supports projects under Reg. 318.3(b) and (c) that are designed to provide preservice preparation of individuals who assist youth with handicaps in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

(5) *Preparation of personnel to provide early intervention services to infants and toddlers with handicaps.* This priority supports projects under Reg. 318.3(b) and (c) that are designed to provide preservice preparation of individuals who serve infants and toddlers with handicaps or those who are at high risk of being handicapped. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program.

(6) *Preparation of personnel for special populations of infants, toddlers, children, and youth with handicaps.* This priority supports the preservice preparation of early intervention, special education, and related services personnel under Reg. 318.3(b) and (c) who will serve special populations of infants, toddlers, children, and youth with handicaps who, because of special characteristics, require professional competencies in addition to those needed for other infants, toddlers, children, and youth with similar disabilities. Project personnel funded under this priority must define a specific special population, describe the additional competencies that are needed by professionals serving that population, and describe how the project's training program will result in the attainment of those competencies.

(7) *Preparation of personnel to work in rural areas.* This priority supports projects under Reg. 318.3(b) and (c) that are designed to provide preservice training of personnel who will serve infants, toddlers, children, and youth with handicaps in rural areas. Projects must also be designed to provide training to assist personnel to work with parents, teachers, and administrators in a rural environment.

(8) *Special projects.* This priority supports projects with preservice and inservice activities specified in Reg. 318.3(a).

(c) In addition to the priority areas described in paragraph (b) of this section, the Secretary may select annually as a priority the support of preservice preparation of special educators and early intervention personnel who serve infants, toddlers, children, and youth with low-incidence handicaps in a designated State or geographic area. Specifically, the Secretary may select one or more of the following low-incidence categories:

(1) Severe handicaps, including intense physical or mental problems, deaf-blindness, and other multiple handicaps.

(2) Deaf

(3) Blind

(4) Serious emotional disturbance

(5) Other health impairments, including autism and chronic or acute health problems.

(20 U.S.C. 1431(a) and (b))

Reg. 318.5 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 80 (Uniform Administrative

Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 318.

(20 U.S.C. 1431(a) and (b) and 1434)

Reg. 318.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Deaf (Reg. 300.5(b)(1))
Deaf-blind (Reg. 300.5(b)(2))
Other health impaired (Reg. 300.5(b)(7))
Seriously emotionally disturbed (Reg. 300.5(b)(8))
Related services (Reg. 300.13)
Special education (Reg. 300.14)

(c) *Definitions in 34 CFR Part 315.* The following term used in this part is defined in 34 CFR Part 315:

Severely handicapped children and youth (Reg. 315.4(d))

(d) *Other definitions specific to 34 CFR Part 318.* The following terms used in this part are defined as follows:

"Act" means the Education of the Handicapped Act (EHA).

"Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, orthopedically impaired, other health impaired, or who have specific learning disabilities, and who by reason thereof need special education and related services.

"Early intervention services" means those developmental services which meet the requirements of section 672(2) of the EHA.

"Infants and toddlers with handicaps" as used in this part means children from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas—

(i) Cognitive development;

(ii) Physical development, including vision and hearing;

(iii) Language or speech development;

(iv) Psychosocial development;

(v) Self-help skills; or

(vi) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term may also include children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(20 U.S.C. 1431(a) and (b))

Subpart B—[Reserved]

Subpart C—How Does The Secretary Make An Award?

Reg. 318.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in Reg. 318.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1431(a) and (b))

Reg. 318.21 What selection criteria does the Secretary use?

(a) The Secretary uses the following criteria to evaluate all applications other than applications for special projects, as described in Reg. 318.3(a).

(1) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with handicaps. The Secretary considers—

(i) The significance of the personnel needs to be addressed to the provision of special education, related services and early intervention services. Significance of need identified by the applicant may be shown by—

(A) Evidence of critical personnel shortages in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with handicaps; or ther indicators of need that the applicant demonstrates are elevant, reliable, and accurate; or

(B) Evidence showing significant need for improvement n the quality of personnel providing special education, related ervices and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(ii) The impact the proposed project will have on the argeted need. Evidence that the project results will have an impact on the targeted needs may include—

(A) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(B) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, the professional contributions of those graduates, and data on the need for graduates in paragraph (a)(1)(ii)(A) of this section; and

(C) For new programs, the extent to which program features support the projections in Reg. 318.21(a)(1)(ii)(A) of this section, and the applicant's plan for helping graduates locate appropriate employment in the area of need or the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(2) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(i) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(ii) The amount of time each key person plans to commit to the project;

(iii) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(iv) The quality of the practicum training settings, including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interaction between students with handicaps and their nonhandicapped peers;

(v) The capacity of the applicant to recruit well-qualified students;

(vi) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(vii) The extent to which the applicant cooperates with State educational agency (SEAs), the State designated lead agency under Part H of the Act, other institutions of higher education (IHEs), and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(vi) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(vii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with handicaps; and

(viii) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(4) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project;

(ii) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired;

(iii) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(b) The Secretary uses the following criteria to evaluate a special projects application described in Reg. 318.3(a):

(1) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, or early intervention services personnel development.

(2) *Program content.* (20 points) The Secretary reviews each application to determine—

(i) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with handicaps; and

(iii) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each of the key personnel plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(20 U.S.C. 1431(a) and (b))

Reg. 318.22 What additional factors does the Secretary consider?

The Secretary makes awards for a one- to five-year period based on the nature of projected needs addressed by the project and the quality of the plan for meeting those needs.

(20 U.S.C. 1431(a) and (b))

Subpart D—What Conditions Must A Grantee Meet?

Reg. 318.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the cost of attendance. Cost of attendance is defined as—

(a) Tuition and fees normally assessed a student carrying the same academic workload, as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(1) Will be an allowance of not less than $1,500 for a student without dependents residing at home with parents;

(2) For students without dependents residing in institutionally owned or operated housing, will be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students, will be an allowance based on the expenses reasonably incurred by the students for room and board, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution), tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specially in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with the study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction must be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(20 U.S.C. 1431(a) and (b))

Reg. 318.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as defined in 34 CFR 668.16(e);

(c) The student is a citizen or a national of the United States.

(20 U.S.C. 1431(a) and (b))

Reg. 318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(20 U.S.C. 1431(a) and (b))

TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED— GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

(34 Code of Federal Regulations Part 319)

Subpart A—General

Reg.
319.1 What is the purpose of this part?
319.2 What activities may the Secretary fund?
319.3 What regulations apply to this program?
319.4 What definitions apply to this program?
319.5 - 319.9 [Reserved]

Subpart B—How Does One Apply For An Award?

319.10 How does an eligible applicant apply for an award?
319.11 - 319.19 [Reserved]

Subpart C—How Does The Secretary Make An Award?

319.20 How does the Secretary determine the amount of a state grant?
319.21 How does the Secretary make an award under the competitive grant process?
319.22 What selection criteria does the Secretary use in the State grant and competitive grant programs?
319.23 - 319.29 [Reserved]

Subpart D—What Conditions Must Be Met After An Award?

319.30 Is student financial assistance authorized?
319.31 What are the student financial assistance criteria?
319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.33 - 319.39 [Reserved]

(Authority: 20 U.S.C. 1432 and 1434, unless otherwise noted.)
[Source: 52 FR 25831, July 8, 1987, as amended at 55 FR 194, Jan. 3, 1990]

Subpart A—General

Reg. 319.1 What is the purpose of this part?

The Secretary funds a mandatory State grant program and may conduct a competitive grant program under this part to assist States in establishing and maintaining preservice and inservice training programs that prepare personnel (or supervisors of such personnel) to meet the needs of infants, toddlers, children, and youth with handicaps.

(a) *State grant program.* Under the State grant program, the Secretary makes a grant to each State educational agency (SEA). If an SEA does not apply for a grant, the Secretary makes the grant to an institution of higher education (IHE) within that State.

(b) *Competitive grant program.* Under the competitive grant program, the Secretary may make grants to SEAs only (in addition to the grants awarded under the State grant programs).

(20 U.S.C. 1432)

Reg. 319.2 What activities may the Secretary fund?

(a) The Secretary supports preservice and inservice training programs that prepare personnel, or their supervisors, to serve infants, toddlers, children, or youth with handicaps.

(b) Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 of the Education of the Handicapped Act.

(20 U.S.C. 1432)

Reg. 319.3 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide

Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 319.

(20 U.S.C. 1432)

Reg. 319.4 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant, Application, Award, Department, EDGAR, Fiscal year, Grant period, Preschool, Project, Public, Secretary, State, State educational agency.

(20 U.S.C. 1432)

Regs. 319.5-319.9 [Reserved]

Subpart B—How Does One Apply For An Award?

Reg. 319.10 How does an eligible applicant apply for an award?

(a) Each SEA may make an application to the Secretary for a competitive grant under reg. 319.1(b).

(b) If an SEA elects not to apply for a State grant under reg. 319.1(a), IHEs within that State may apply for the grant for that State. However, only one State grant may be awarded in each State. If any SEA chooses not to apply for the State grant award, it must notify all IHEs within the State of this decision one month prior to the competition closing date.

(c) If applications are submitted by more than one IHE within a State, the Secretary uses the selection criteria in reg. 319.22 to evaluate the applications. An IHE that proposes to provide preservice special education and related services training must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidence by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the grant is for the purpose of assisting the applicant to meet those standards.

(20 U.S.C. 1432)

Regs. 319.11-319.19 [Reserved]

Subpart C—How Does The Secretary Make An Award?

Reg. 319.20 How does the Secretary determine the amount of a State grant?

(a) The Secretary determines the amount of a grant under reg. 319.1(a) based upon the applicant's need for assistance under this part for activities in the State comprehensive system of personnel development, as follows:

(1) The Secretary provides each SEA a minimum proportionate share of no less than 80% of the funds available under this section, based on the State's proportion of the national child count provided under part B of the Education of the Handicapped Act (EHA) and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(2) However, in order to ensure that each State receives an award of sufficient size and scope, no State will receive less than $75,000.

(b) After determining a State's grant under paragraph (a) of this section, the Secretary determines annually the additional amount of funds to be awarded for the quality of the application based on the criteria set forth in reg. 319.22(b).

(20 U.S.C. 1432)

Reg. 319.21 How does the Secretary make an award under the competitive grant process?

(a) The Secretary may make a limited number of awards to SEAs on a competitive basis for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel (or supervisors of those persons), to meet the needs of handicapped infants, toddlers, children, and youth, consistent with the personnel needs identified in the State comprehensive system of personnel development.

(b) In any fiscal year, the Secretary may not expend for this competitive program an amount more than 10% of the amount expended under section 632 of the EHA in the preceding fiscal year.

(20 U.S.C. 1432)

Reg. 319.22 What selection criteria does the Secretary use in the State grant and competitive grant programs?

(a) The Secretary uses the criteria in paragraph (b) of this section to evaluate an application for a State grant (SEA or IHE applicant) and for a competitive grant.

(b)(1) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(i) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive system of personnel development;

(ii) The extent of which the project addresses the personnel needs selected by the applicant under paragraph (b)(1)(i) of this section; and

(iii) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the Education of the Handicapped Act.

(2) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) Competencies that will be acquired by each trainee and how the competencies will be evaluated are identified;

(ii) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with handicaps;

(iii) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(iv) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with handicaps;

(v) If relevant, appropriate practicum facilities are assessible to the applicant agency trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope, and length;

(vi) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment;and

(vii) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited to, the number of trainees graduated or otherwise to complete training and hired.

(See 34 CFR 75.590, Evaluation by the grantee).

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(5)(i) and (ii) of this section plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the trainer's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(20 U.S.C. 1432)

Regs. 319.23-319.29 [Reserved]

Subpart D—What Conditions Must Be Met After An Award?

Reg. 319.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the student's cost of attendance. "Cost of attendance" means—

(a) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required to all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(1) For a student without dependents residing at home with parents, is not less than $1,500;

(2) For students without dependents residing in institutionally owned or operated housing, is a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students, is an allowance based on the expenses reasonably incurred by the students for room and board, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution), tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means to telecommunication technology, no distinction may be made with respect to the mode of instruction in determining costs. This paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(20 U.S.C. 1432)

Reg. 319.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study, as provided in 34 CFR 668.16(e); and

(c) The student is a citizen or a national of the United States.

(20 U.S.C. 1432)

Reg. 319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(20 U.S.C. 1432)

Reg. 319.33 What financial assistance is authorized for part-time students?

(a) Students enrolled for less than a full-time academic year may receive a traineeship or stipend.

(b) Part-time students who are receiving financial assistance from other public or private agencies or institutions for training are not eligible for financial assistance under this section.

(20 U.S.C. 1432)

Reg. 319.34 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for other project costs, including awards to other students, during the grant period.

(20 U.S.C. 1432)

Reg. 319.35 What types of reports are required?

Not more than sixty days after the end of any fiscal year, each recipient of a grant during such fiscal year shall prepare and submit a report to the Secretary. Each report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(a) The number of individuals trained under the grant by category of training and level of training; and

(b) The number of individuals trained under the grant receiving degress and certification, by category and level of training.

(20 U.S.C. 1434)
(Approved by the Office of Management and Budget under control number 1820-0530)

Regs. 319.36-319.39 [Reserved]

CLEARINGHOUSES FOR THE HANDICAPPED
(34 Code of Federal Regulations Part 320)

Subpart A—General

Reg.
320.1 What is the Clearinghouses for the Handicapped Program?
320.2 Who is eligible to apply for assistance under this program?
320.3 What regulations apply to this program?
320.4 What definitions apply to this program?
320.5-320.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

320.10 What kinds of activities may be supported under this part?
320.11-320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make A Grant?

320.30 What are the selection criteria used to award a grant?
320.31 What are the priorities for funding under this program?
320.32-320.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee?

320.40 What evaluation and coordination requirements must be met by a grantee?
320.41-320.49 [Reserved]

(Authority: 20 U.S.C. 1433, unless otherwise noted.)
[Source: 49 FR 25986, June 25, 1984, unless otherwise noted]

Subpart A—General

Reg. 320.1 What is the Clearinghouses for the Handicapped Program?

The Clearinghouses for the Handicapped Program provides financial assistance for—

(a) A national clearinghouse on the education of the handicapped that disseminates information and provides technical assistance to parents, professionals, and other interested parties;

(b) A national clearinghouse on postsecondary education for handicapped individuals;

(c) A national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of handicapped children and youth; and

(d) Projects to carry out, in conjunction with any clearinghouse established under this part, specific recruitment and information activities.

(20 U.S.C. 1433)
[49 FR 25986, June 25, 1984, as amended at 52 FR 26657, July 15, 1987]

Reg. 320.2 Who is eligible to apply for assistance under this program?

Parties eligible to apply for assistance under this part are public agencies or nonprofit private organizations or institutions. In addition, contracts may be made with profit-making organizations under this section only when necessary for materials or media access.

(20 U.S.C. 1433)

Reg. 320.3 What regulations apply to this program?

The following regulations apply to grants awarded under this program:

(a) The regulations in this Part 320.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions);
(4) Part 78 (Education Appeal Board); and
(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1433; 20 U.S.C. 3474(a))

Reg. 320.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Contract
EDGAR
Grant
Nonprofit
Private
Project

Public
Secretary
State

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The term "parent" as used in this part is defined in 34 CFR 300.10.

(20 U.S.C. 1433)

Regs. 320.5- 320.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

Reg. 320.10 What kinds of activities may be supported under this part?

The Secretary may provide funds under this part to—

(a) Establish and operate a national clearinghouse on the education of the handicapped that will—

(1) Disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning at least—

(i) Programs relating to the education of the handicapped under the Education of the Handicapped Act and under other Federal laws;

(ii)(A) Special educational programs, services, and resources;

(B) Related medical, health, social, and recreational services;

(C) Options for training and experience in daily living skills programs;

(D) The nature of various handicapping conditions and their educational and employment implications;

(E) Legal issues affecting the handicapped; and

(F) Information on available services and programs in postsecondary education for the handicapped; and

(iii) Participation in programs described in paragraphs (a)(1)(i) and (ii) of this section, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance; and

(2) Promote the involvement of handicapped individuals, parents, volunteers, professionals, and interested organizations in the provision of information to the general public concerning the handicapped;

(b) Establish and operate a national clearinghouse on postsecondary education for handicapped individuals that will collect and disseminate information on a national basis to handicapped individuals, professionals, and other interested individuals, concerning postsecondary services and programs for the handicapped, including specially designed programs of postsecondary, vocational, technical, and adult education for handicapped individuals;

(c) Establish and operate a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields related to the education of handicapped children and youth through the following:

(1) Collection and dissemination of information on current and future national, regional, and State needs for special education and related services personnel. To meet this requirement, the clearinghouse must—

(i) Collect, validate, and provide ready access to existing information about current needs;

(ii) Develop a plan to estimate future needs;

(iii) Conduct investigations designed to improve the relevance and accuracy of information on current and future needs;

(iv) Collect, analyze, and report on information concerning the current personnel needs related to differently aged children and youth with handicaps of varying severity; and

(v) Devise mechanisms to foster better collection and dissemination of information on current and future personnel needs.

(2) Dissemination of information to high school guidance counselors and others concerning current career opportunities in special education and related services, location of programs that prepare personnel for the various special education and related service professions and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identification of training programs, for the various special education and related service professions, that meet State and professionally recognized standards for programs that prepare personnel for those professions.

(4) Establishment of a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provision of technical assistance to institutions seeking to meet State and professionally recognized standards of personnel preparation; and

(d) Support projects to carry out, in conjunction with any clearinghouse established under this section, any of the activities described in paragraph (a).

(20 U.S.C. 1433)
[49 FR 25986, June 25, 1984, as amended at 52 FR 26657, July 15, 1987]

Regs. 320.11- 320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make A Grant?

Reg. 320.30 What are the selection criteria used to award a grant?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all the criteria is 100 points. The maximum score for each complete criterion is indicated in parentheses.

(a) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, *Evaluation by the grantee.)*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Experience and ability.* (10 points)

The Secretary looks for information that shows the applicant's—

(1) National experience relevant to performance of the functions supported by this program;

(2) Ability to conduct its proposed project;

(3) Ability to communicate with the intended consumers of information; and

(4) Ability to maintain the necessary communication with other agencies and organizations.

(g) *Cooperation and coordination with other agencies.* (10 points)

(1) The Secretary reviews each application for information that shows the activities funded under this section will be coordinated with—

(i) Similar activities funded from grants and contracts awarded under this part and under Part C of the Act; and

(ii) Other agencies and organizations conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature and extent of, and timeline for, coordination which the applicant has had and proposes to have to facilitate implementation and continuation of the project activities after termination of Federal funding.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1433)
[49 FR 25986, June 25, 1984, as amended at 52 FR 26657, July 15, 1987]

Reg. 320.31 What are the priorities for funding under this program?

The Secretary may select as annual priorities any of the activities listed in Reg. 320.10 by publishing a notice in the Federal Register.

(20 U.S.C. 1433)

Regs. 320.32-320.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee?

Reg. 320.40 What evaluation and coordination requirements must be met by a grantee?

(a) Each grantee under this part shall ensure that any printed materials it produces or disseminates have been evaluated by handicapped individuals, parents of handicapped children and youth, and by appropriate professionals with respect to the quality, currency, and appropriateness of, and the need to develop or disseminate, the materials.

(b) Recipients of awards under Reg. 320.10(a), (b), and (c) shall coordinate the dissemination of materials and information activities supported under this part.

(20 U.S.C. 1433)
[49 FR 25986, June 15, 1984, as amended at 52 FR 26657, July 15, 1987]

Regs. 320.41-320.49 [Reserved]

RESEARCH IN THE EDUCATION OF THE HANDICAPPED PROGRAM

(34 Code of Federal Regulations Part 324)

Subpart A—General

Reg.
324.1 What is the Research in Education of the Handicapped Program?
324.2 Who is eligible to apply for an award under this program?
324.3 What regulations apply to this program?
324.4 What definitions apply to this program?
324.5-324.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

324.10 What kinds of projects are authorized under this part?
324.11 What kinds of research and model projects are supported under this part?
324.12-324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make An Award?

324.30 How does the Secretary select and announce funding priorities under this program?
324.31 What are the selection criteria for evaluating applications for research projects?
324.32 What are the selection criteria for evaluating applications for model projects?
324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?
324.34-324.29 [Reserved]

Subpart E—What Conditions Must Be Met By A Recipient?

324.40 What conditions must be met by a recipient?
324.41-324.49 [Reserved]

Appendix

Part 1—Introduction

Sec.
1.1 Scope of guidelines

Part 2—Application Information

2.1 Preparation of applications for research projects
2.2 Preparation of applications for model projects

(Authority: 20 U.S.C. 1441-1444, unless otherwise noted.)
[Source: 50 FR 34639, Aug. 26, 1985, unless otherwise noted]

Subpart A—General

Reg. 324.1 What is the Research in Education of the Handicapped Program?

The purpose of this program is to provide support for—

(a) Research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving special education, early intervention services, and related services for handicapped infants, toddlers, children, and youth;

(b) Research, surveys, or demonstrations relating to the provision of services to handicapped infants, toddlers, children, and youth;

(c) Research and related purposes relating to physical education or recreation for handicapped children; and

(d) Research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)
[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987]

Reg. 324.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for the research and related activities authorized under Section 641(a) of the Education of the Handicapped Act.

(b) The Secretary may award grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and may make contracts with States, State and local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations for research and related purposes authorized under Section 642 of the Education of the Handicapped Act, relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)
[50 FR 34639, Aug. 26, 1985, as amended at 50 FR 43702, Oct. 29, 1985]

Reg. 324.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 324.

(b) The Education Department General Administrative Regulations (EDGAR), set out in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 78 (Education Appeal Board).

(20 U.S.C. 1441-1444)

Reg. 324.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Secretary
State educational agency

(20 U.S.C. 1441-1444)

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14;

Handicapped children
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other Definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definition applies to this part:

"Handicapped youth" means any handicapped child who—

(1) Is twelve years of age or older; or

(2) Is enrolled in the seventh or higher grade in school.

(20 U.S.C. 1401(b))

Regs. 324.5-324.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

Reg. 324.10 What kinds of projects are authorized under this part?

Research and related activities that may be assisted under this part include—

(a) The development of new and improved techniques and devices for teaching handicapped infants, toddlers, children, and youth;

(b) The development of curricula that meet the unique educational and developmental needs of handicapped infants, toddlers, children, and youth;

(c) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped infants, toddlers, children, and youth;

(d) The development of program models and exemplary practices in areas of special education and early intervention;

(e) The dissemination of information on research and related activities conducted under this part to regional resource centers, interested individuals, and organizations;

(f) The development of instruments, including tests, inventories, and scales for measuring progress of handicapped infants, toddlers, children, and youth across a number of developmental domains;

(g) Research and related activities, surveys, or demonstrations relating to physical education or recreation for handicapped children; and

(h) Student-initiated or field-initiated projects consistent with the purpose of the program, as described in Reg. 324.1.

(20 U.S.C. 1441(a), 1442)
[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987]

Reg. 324.11 What kinds of research and model projects are supported under this part?

(a) Research projects supported under this part must be designed to generate knowledge about the early intervention or education of handicapped infants, toddlers, children and youth and to translate the knowledge into practical techniques and materials.

(b) Model projects supported under this part must develop and implement innovative early intervention or educational programs that serve handicapped infants, toddlers, children and youth either directly or indirectly. These projects must be designed to—

(1) Improve significantly an aspect of the education of handicapped children and youth;

(2) Provide information about the comparative effectiveness of the model being demonstrated;

(3) Continue beyond the award period; and

(4) Provide for dissemination and replication of a successful program.

(20 U.S.C. 1441, 1442)
[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987]

Regs. 324.12-324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make An Award?

Reg. 324.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the types of activities under Reg. 324.10.

(b) Under Section 641(c) of the Education for the Handicapped Act, the Secretary is required to publish proposed research priorities for public comment in the Federal Register every two years, not later than July 1. The Secretary is required to publish final priorities for this program not later than 30 days after the close of the comment period.

(c) The Secretary establishes separate competitions for research and model projects for any activity for which the Secretary provides assistance under this part.

(20 U.S.C. 1441(c), 1442)

Reg. 324.31 What are the selection criteria for evaluating applications for research projects?

The Secretary uses the criteria in this section to evaluate applications for research projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross reference: 34 CFR 75.590. *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of Resources.*(5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of handicapped infants, toddlers, children, and youth.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped infants, toddlers, children, and youth or personnel responsible for their education or early intervention services.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1441-1442)
[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987; 53 FR 49145, Dec. 6, 1988]

Reg. 324.32 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model project awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project;

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross-reference: 34 CFR 75.590. *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of Resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine if—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

(1) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan for the development, implementation, and evaluation of the model with respect to such matters as—

(i) The population to be served;

(ii) The model planning process;

(iii) Record keeping systems;

(iv) Coordination with other service providers;

(v) The identification and assessment of students;

(vi) Interventions to be used, including proposed curricula;

(vii) Individualized educational program planning; and

(viii) Parent and family participation.

(Approved by the Office of Management and Budget under control number 1820-0028).
(20 U.S.C. 1441-1442)
[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987; 53 FR 49145, Dec. 6, 1988]

Reg. 324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?

The Secretary uses the criteria in 34 CFR 75.210 *(Selection criteria for a discretionary grant program that does not have regulations)* to evaluate applications for new awards for research-related activities other than research and model projects.

(20 U.S.C. 1441-1442)

Regs. 324.34- 324.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Recipient?

Reg. 324.40 What conditions must be met by a recipient?

Not more than 90 days after the completion of a project assisted under this part, each recipient must submit a report to the Secretary that includes—

(a) An abstract of the project;

(b) For a research project, a description of the research problem and the methodological approach used in the research study; or

(c) For a model project—

(1) A description of the model which permits replication, in part or in whole, by appropriate parties to which it is disseminated; and

(2) A description of the evaluation procedures and findings related to the effectiveness of the model;

(d) A summary of the project findings; and

(e) A statement of the conclusions.

(Approved by the Office of Management and Budget under control number 1820-0002).
(20 U.S.C. 1441(d))

Regs. 324.41- 324.49 [Reserved]

Appendix

Note—This appendix has not been codified in the Code of Federal Regulations.

Guidelines-Research in Education of the Handicapped Program

Part 1—Introduction

Sec. 1.1 Scope of guidelines

The guidelines contained in this document are recommendations and suggestions for meeting legal requirements which apply to Federal assistance under the Education of the Handicapped Act, Part E, sections 641-644. The legal requirements include the Act itself (20 U.S.C. 1441-1444) and applicable regulations (34 CFR Parts 75 and 324). The guidelines are not requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

[20 U.S.C. 1441-1444]

Part 2—Application Information

Sec. 2.1 Preparation of applications for research projects.

It is suggested that project descriptions include the following features in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The problem or issue the project is addressing; (2) the project's goals and products; and (3) the methodology. The overview of the methodology should provide specific detail on the sample, if one is to be used (i.e., number of local educational agencies, number of students, category of exceptionality), and a brief description of the project's design, measurement, and analysis procedure.

(b) *Importance.* This section should present the problem or issue to be addressed. Using previous research findings, the experiences of service providers, and a conceptual framework, the applicant should make a convincing argument for the significance of the need which exists, and the importance of the proposed project in understanding, remediating, or compensating for the problem/issue. This section should also include a description of the expected outcomes. Finally, it should provide a list of procedural objectives

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which describe the major activities to be implemented during the project and for which detailed explanations and justifications are provided in the subsequent sections of the application.

(c) *Technical Method (Soundness).* This section should provide both a description and justification for the project design, sample, measurement techniques, instrumentation, and data analysis procedures. This section should provide sufficient detail or reviews to be able to make informed judgments about the soundness of the proposed research procedure. This is the one aspect of the application narrative which is frequently too short. Applicants need to explain and justify their selection of procedures. The relationship between the proposed activities and the proposed duration of the project should also be made apparent in this section.

(d) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates, for each major activity, the number of days by person. This section should explicitly describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(e) *Evaluation Plan.* This section of the application should describe procedures to assure that the project's activities are being implemented appropriately and that project objectives are being met. Project evaluation procedures should differ from the analysis procedures for the research data described in section (c) *Technical Methods (Soundness).*

(f) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for that designated position. This section should also describe procedures for encouraging applications for employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately-supported activities.

(g) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed research activity, and it should demonstrate access to and commitment from schools, agencies, or other organization necessary to carry out the proposed research. This is particularly important regarding access to proposed samples.

(h) *Impact.* This section of the application should be used to make the best case for the potential difference the proposed research could make in addressing the needs developed in the purpose section. The impact statement should consider the contribution the findings or products will make to current understanding, knowledge, and practice.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

Sec. 2.2 Preparation of applications for model projects.

It is suggested that project descriptions include the following features in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The service delivery problem the project is addressing; (2) the project's goals and strategies; and (3) the methods. The overview of the methods should provide specific details on the population to be served and the intervention to be used.

(b) *Importance.* This section should present the service delivery problem to be addressed. Using previous research findings, need assessments, and the experiences of service providers, the applicant should make a convincing argument for the significance of the delivery problem to service providers across the Nation.

(c) *Innovativeness.* This section should provide a conceptual framework that is founded on previous theory and research and provides a basis for the unique strategies and approaches that will be used in addressing the identified service delivery problem. This section should also make clear the contribution the proposed findings and products will make in advancing current knowledge, understanding, and practice.

(d) *Technical Method (Soundness).* This section should provide both a description and justification of the project's strategies. Specific information should be provided as to the population to be served, the model planning process, coordination among service providers, the interventions to be used, and parent and family participation. Model projects that will provide direct services to students should also include information as to the identification and assessment of students, record keeping systems, proposed curricula, and individualized educational program planning. This aspect of the application narrative should be detailed enough to make it clear what activities will be carried out in the project. Applicants need to explain and justify their strategies.

(e) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates, for each major activity, the number of days by person. This section should explicitly describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(f) *Evaluation Plan.* This section of the application should describe the plan and the procedures to evaluate the project, including the effectiveness of the model in educating handicapped students. In particular, procedures should be described for comparing the effectiveness of the model with other service delivery strategies.

(g) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for his/her designated position. This section should also describe procedures for encouraging applications for employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately-supported activities.

(h) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed project, and it should demonstrate access to schools, agencies, or other organizations necessary to carry out the proposed project.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

[20 U.S.C. 1441-1444; 34 CFR 324.31-324.32

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SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH

(34 Code of Federal Regulations Part 326)

Subpart A—General

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326.33 What are the selection criteria for evaluating applications for model projects?
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326.42-326.49 [Reserved]

(Authority: 20 U.S.C. 1425, unless otherwise noted.)
[Source: 49 FR 28383, July 11, 1984, unless otherwise noted.]

Subpart A—General

Reg. 326.1 What is the Secondary Education and Transitional Services for Handicapped Youth Program?

(a)(1) The purpose of this program is to assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment.

(2) The Secretary carries out this purpose by providing assistance for projects that—

(i) Strengthen and coordinate education and related services that assist handicapped youth currently in school or who recently left school to assist them in the transition to competitive or supported employment, postsecondary education, vocational training, continuing education, or adult services;

(ii) Stimulate the improvement and development of programs for secondary special education; or

(iii) Stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

(b) The purpose of this program is also to ensure that secondary special education and transitional services result in competitive or supported employment for handicapped youth.

(20 U.S.C. 1425)
[49 FR 28383, July 11, 1984, as amended at 52 FR 34368, Sept. 10, 1987]

Reg. 326.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this program by grants to, or contracts with—

(a) Institutions of higher education;

(b) State Educational agencies;

(c) Local Educational agencies; and

(d) Other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

(20 U.S.C. 1425(a))

Reg. 326.3 What regulations apply to this program?

The following regulations apply to awards under the Secondary Education and Transitional Services for Handicapped Youth program:

(a) The regulations in this Part 326.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions);
(4) Part 78 (Education Appeal Board); and
(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1425; 20 U.S.C. 3474(a))

Reg. 326.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 C.F.R. 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secondary school
Secretary
State
State educational agency

(20 U.S.C. 1425; 20 U.S.C. 3474(a))

(b) *Definitions in 34 C.F.R. Part 300.* The following terms used in this part are defined in 34 C.F.R. 300.5, 300.13, and 300.14:

Handicapped children
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definitions apply to this part:

(1) "Handicapped youth" means any handicapped child who—

(i) Is twelve years of age or older; or

(ii) Is enrolled in the seventh or higher grade in school; or

(iii) Was enrolled in the seventh or higher grade in school and recently left school.

(20 U.S.C. 1401(b), 1425(a)(1))

(2) "Supported employment" is paid work in a variety of settings, particularly regular work sites, especially designed for handicapped individuals—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive ongoing support to perform in a work setting.

(20 U.S.C. 1425)
[49 FR 28383, July 11, 1984, as amended at 52 FR 34368, Sept. 10, 1987]

Regs. 326.5-326.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

Reg. 326.10 What kinds of projects are authorized under this part?

(a) This program supports research, development, demonstration, evaluation, and other types of projects for the following purposes:

(1) To improve secondary education programs for handicapped youth.

(2) To coordinate with other activities serving this population.

(3) To provide education and related services to assist handicapped youth in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, or adult services.

(4) To stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

(b) Projects funded under this part must serve handicapped youth and may also include other handicapped individuals who have recently left special education programs.

(20 U.S.C. 1425)
[49 FR 28383, July 11, 1984, as amended at 52 FR 34369, Sept. 10, 1987]

Regs. 326.11-326.19 [Reserved]

Subpart C—How Does One Apply For A Grant?

Reg. 326.20 What must an applicant include in its application?

(a) Each applicant must include in its application information demonstrating how the activities it proposes will lead to competitive or supported employment of handicapped individuals.

(b) Each applicant, other than for the purpose of conducting studies or evaluation, shall—

(1) Describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations;

(2) Describe the procedures to be used for coordinating services among agencies for which handicapped youth are or will be eligible;

(3) To the extent appropriate, provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

(c) Each applicant for activities described in Reg. 326.30(a) and (b) that is not an educational agency must include in its application information demonstrating how it has met, and will meet, the requirements of Reg. 326.41.

(20 U.S.C. 1425)
[49 FR 28383, July 11, 1984, as amended at 52 FR 34369, Sept. 10, 1987]

Regs. 326.21- 326.29 [Reserved]

Subpart D—How Does The Secretary Make A Grant?

Reg. 326.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually one or more of the following priority areas for funding:

(a) *Transition Strategies and Techniques.* This priority supports research projects designed to develop strategies and techniques for transition to competitive or supported employment through improvements in independent living skills, secondary and postsecondary education, vocational preparation, and availability of work opportunities.

(b) *Service Demonstration Models.* This priority supports projects that develop and establish exemplary models for services and individual education programs, including specific vocational training and job placement, that result directly in paid employment in regular work settings for handicapped youth leaving school, or that enhance the effectiveness of secondary and postsecondary services which lead to employment.

(c) *Demographic Studies.* This priority supports demographic studies of the numbers, locations, age levels, types and degrees of disabilities of handicapped youth, and anticipated transition and adult services needed by those youth to obtain competitive or supported employment.

(d) *Service Delivery Research Projects.* This priority supports research projects, including field testing and evaluation of innovative service approaches to service delivery models or components to assist handicapped youth in secondary school and in other services that assist transition to employment. These service delivery approaches can be replicated and disseminated.

(e) *Cooperative Models for Planning and Developing Transitional Services.* This priority supports projects designed to plan and develop cooperative models for activities among State or local educational agencies, developmental disabilities councils, and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment agencies, and private employers, which will facilitate effective planning for services to meet the employment needs of handicapped youth as they leave school.

(f) *Procedures for Evaluation of Secondary Education, Vocational Training, and Placement Services.* This priority supports projects that will develop appropriate procedures for evaluating secondary special education, vocational training, placement, and other transitional services that lead to employment for handicapped youth.

(g) *Program Evaluation.* This priority supports projects that will evaluate the effectiveness of the program carried out under this part to assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment.

(h) *Research Projects in Secondary Education.* This priority supports research projects which focus on secondary level programs for handicapped youth. These projects will have as their major objective the development and improvement of replicable programs and will focus on the evaluation of the program or the components of the program, such as curricula design, program organization, employer involvement, and instructional methods.

(i) *Drop Out Studies.* This priority supports studies which provide information on the numbers, age levels, types of handicapping conditions and reasons why handicapped youth drop out of school.

(j) *Curriculum Development.* This priority supports the development of special education curriculum and instructional techniques that will improve handicapped students' acquisition of the skills necessary for transition to adult life and services.

(k) *Physical Education and Therapeutic Recreation.* This priority supports specially designed physical education and therapeutic recreation programs to increase the potential of handicapped youth for community participation.

(20 U.S.C. 1425)
[49 FR 28383, July 11, 1984, as amended at 52 FR 34368, Sept. 10, 1987]

Reg. 326.31 How does the Secretary establish priorities?

For any fiscal year, the Secretary may select a priority or combination of priorities from among those listed in Reg. 326.30 by publishing a notice in the *Federal Register.*

(20 U.S.C. 1425)

Reg. 326.32 What are the selection criteria for evaluating applications for research and evaluation projects?

The Secretary uses the criteria in this section to evaluate applications for research and evaluation projects, including projects submitted under Reg. 326.30(a), (c), (d), (f), (g), and (h). The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, *Evaluation by the grantee*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed project in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Technical soundness.* (40 points)

The Secretary reviews each application for information demonstrating the technical soundness of the research or evaluation plan, including—

(1) The design (10 points);

(2) The proposed sample (10 points);

(3) Instrumentation (10 points); and

(4) Data analysis procedures (10 points).

(20 U.S.C. 1425)

Reg. 326.33 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model projects, including projects submitted under Reg. 326.30(b) and (e). The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed model in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;
(2) The model planning process;
(3) Recordkeeping systems;
(4) Coordination with other service providers;
(5) The identification and assessment of students;
(6) Interventions to be used, including proposed curricula;
(7) Individualized educational program planning; and
(8) Parent and family participation.

(20 U.S.C. 1425)

Reg. 326.34 Are awards in this program geographically dispersed?

As much as feasible, the Secretary, in addition to using the criteria in Regs. 326.32 and 326.33, geographically disperses awards throughout the Nation in urban as well as rural areas.

(20 U.S.C. 1425)
[52 FR 34369, Sept. 16, 1987]

Regs. 326.35-326.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee?

Reg. 326.40 What is the requirement for participation of handicapped students and their parents?

Each grantee shall, to the extent appropriate, provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of its project.

(20 U.S.C. 1425(d))

Reg. 326.41 What coordination requirements must a grantee meet?

A grantee that is not an educational agency shall coordinate with the State educational agency of each affected State in the planning, development, and implementation of any activities described in Reg. 326.30(a) or (b).

(20 U.S.C. 1425(c))

Regs. 326.42-326.49 [Reserved]

HANDICAPPED SPECIAL STUDIES PROGRAM

(34 Code of Federal Regulations Part 327)

Subpart A—General

Reg.
327.1 What is the Handicapped Special Studies Program?
327.2 Who is eligible to apply for an award under this program?
327.3 What regulations apply to this program?
327.4 What definitions apply to this program?
327.5-327.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

327.10 What kinds of projects are authorized under this part?
327.11-327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make An Award?

327.30 How does the Secretary establish priorities for an award?
327.31 What are the selection criteria for evaluating applications for awards?
327.32-327.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee?

327.40 What are the requirements for conducting projects?
327.41-327.49 [Reserved]

(Authority: 20 U.S.C. 1418, unless otherwise noted.)
[Source: 50 FR 35484, Aug. 30, 1985, unless otherwise noted]

Subpart A—General

Reg. 327.1 What is the Handicapped Special Studies Program?

The purpose of this program is to support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs and projects assisted under the Education of the Handicapped Act, and related activities to provide the Congress and others with this information.

(20 U.S.C. 1418)

Reg. 327.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make awards under this program to public or private agencies, institutions, organizations, and other appropriate parties for support of the kinds of projects described in Reg. 327.10(a)-(b) and (d)-(h).

(b) In order to carry out the projects described in Reg. 327.10(c), the Secretary may enter into cooperative agreements with—

(1) State educational agencies; and

(2) Other State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Education of the Handicapped Act.

(20 U.S.C. 1418)
[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988]

Reg. 327.3 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The regulations in this Part 327.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1418)

Reg. 327.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee

Local educational agency
Project
Secretary
State educational agency.

20 U.S.C. 1418)

(b) *Definition in 34 CFR Part 300.* The following erm used in this part is defined in 34 CFR 300.5: Handicapped hildren.

20 U.S.C. 1401(a)(1))

Regs. 327.5- 327.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under This Program?

Reg. 327.10 What kinds of projects are authorized under this part?

Projects authorized under this part include activities to—

(a) Collect data, and conduct studies, investigations, and evaluations to assess progress in the implementation of the Act, the impact of the Act, and the effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to all handicapped children and youth, and early intervention services to handicapped infants and toddlers;

(b) Obtain data, on at least an annual basis, about programs and projects assisted under the Act and under other Federal laws relating to the provision of services to handicapped infants, toddlers, children, and youth, as required under Section 618(b) of the Act;

(c) Assess the impact and effectiveness of programs assisted under the Act, in accordance with sections 618(d)(1) and (2) of the Act, through cooperative agreements with State agencies;

(d) Provide technical assistance to participating State agencies in the implementation of the evaluation studies described under paragraph (c) of this section;

(e) Disseminate information from the studies assisted under paragraph (c) of this section to State agencies, regional resource centers, clearinghouses, and, as appropriate, others involved in or concerned with the education of and early intervention services for handicapped infants, toddlers, children, and youth;

(f) Conduct evaluation studies to determine the impact of the Act;

(g) Conduct evaluation studies, including—

(1) A longitudinal study of a sample of handicapped studies, encompassing the full range of handicapping conditions, to examine their educational progress while in special education and their status (including their occupational, educational, and independent living status) after leaving secondary school; or

(2) Obtaining and compiling current information from State and local educational agencies and other service providers regarding State and local expenditures for educational services for handicapped children in order to calculate per pupil expenditures by handicapping condition; or

(h) Assist in the development, publication, and dissemination of the annual report to the Congress required under section 618(f) of the Act.

(20 U.S.C. 1418)
[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988]

Regs. 327.11- 327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does The Secretary Make An Award?

Reg. 327.30 How does the Secretary establish priorities for an award?

Section 618(c) of the Education of the Handicapped Act requires that not later than July 1 of each year, the Secretary submit to the appropriate committee of each House of the Congress and publish in the *Federal Register* proposed evaluation priorities for the program under this part for review and comment.

(20 U.S.C. 1418)

Reg. 327.31 What are the selection criteria for evaluating applications for awards?

The Secretary uses the criteria in this section to evaluate applications for awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation* (10 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualification of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points).

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points).

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points).

(1) The Secretary reviews each application to determine if the proposed project addresses State and national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the issues to be addressed for both State and national audiences;

(ii) The importance of the proposed project in determining the impact and effectiveness of programs assisted under the Act;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research and evaluation findings related to the issues.

(g) *Usefulness.* (10 points).

The Secretary reviews each application to determine the usefulness of the proposed project findings in improving services to handicapped infants, toddlers, children, and youth including—

(1) The contribution that the project findings or products will make to current knowledge or practice;

(2) The extent to which findings and reports will be useful in improving services for handicapped infants, toddlers, children, and youth; and

(3) The extent to which findings and reports will be useful to both State and national audiences in understanding the impact and effectiveness of programs assisted under the Education of the Handicapped Act.

(h) *Technical soundness.* (40 points).

The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including, where appropriate—

(1) The design;

(2) The proposed sample;

(3) Instrumentation;

(4) Data analysis procedures; and

(5) Procedures for the development of the project report.

(20 U.S.C. 1418)
[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988]

Regs. 327.32- 327.39 [Reserved]

Subpart E—What Conditions Must Be Met By A Grantee?

Reg. 327.40 What are the requirements for conducting projects?

Each State educational agency or other State agency receiving an award for a State Agency/Federal Evaluation Studies project under Reg. 327.10(c) shall—

(a) Contribute an amount not less than 40 percent of the total cost of the study, which amount may be paid from a State's allocation of funds for State administration of Part B of the Act; and

(b) Develop the study in consultation with the State advisory panel established under the Act, local educational agencies, others involved in or concerned with the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

(20 U.S.C. 1418(c), (d)(2))
[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988]

Regs. 327.41- 327.49 [Reserved]

CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

(34 Code of Federal Regulations Part 330)

Subpart A—General

Reg.
330.1 Captioned films loan service for the deaf program
330.2 Who is eligible to apply under the captioned films loan service for the deaf program?
330.3 What regulations apply to the captioned films loan service for the deaf program?
330.4 What definitions apply to the captioned films loan service for the deaf program?

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

330.30 How does one apply for the use of the loan service?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met By A Borrower?

330.50 What are the limitations on use of the loan service?

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.
[Source: 45 FR 52130, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart A—General

Reg. 330.1 Captioned films loan service for the deaf program.

The Captioned Films Loan Service for the Deaf Program promotes the general welfare of deaf persons by—

(a) Bringing to deaf persons understanding and appreciation of those films that play an important part in the general and cultural advancement of hearing persons;

(b) Providing enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment and

(c) Providing a wholesome and rewarding experience that deaf persons may share together.

(20 U.S.C. 1451)
[53 FR 41085, Oct. 19, 1988]

Reg. 330.2 Who is eligible to apply under the captioned films loan service for the deaf program?

The following are eligible to apply to borrow captioned films:

(a) Deaf persons.

(b) Parents of deaf persons.

(c) Other persons directly involved in activities promoting the advancement of deaf persons in the United States.

(20 U.S.C. 1452(a))

Reg. 330.3 What regulations apply to the captioned films loan service for the deaf program?

The following regulations apply to the Captioned Films Loan Service for the Deaf Program:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 77 (General).

(b) The regulations in this Part 330.

(20 U.S.C. 1451-1453)

Reg. 330.4 What definitions apply to the captioned films loan service for the deaf program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Nonprofit

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub.L. 91-230 as amended).

"Borrower" means a user of loan service media.

"Deaf person" means a person whose hearing is so severely impaired as not to be correctable to a functional level for the ordinary activities of living.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

"Theatrical films" means films produced for showing in a commercial setting as entertainment and not those primarily developed for use in a formal program of instruction.

(20 U.S.C. 1451, 1452)
[53 FR 41085, Oct. 19, 1988]

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

Reg. 330.30 How does one apply for the use of the loan service?

Eligible parties should contact the Division of Media Services of the Office of Special Education and Rehabilitative Services for information regarding an application for borrowing captioned films.

(20 U.S.C. 1452)

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met By A Borrower?

Reg. 330.50 What are the limitations on use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only.

(b)(1) A borrower shall ensure that no fee is charged to anyone for using the films.

(2) However, a borrower may collect funds for—

(i) The payment of reasonable rent for the use of equipment;

(ii) The payment of reasonable costs for a meeting place for the showing of a film; and

(iii) The payment of reasonable fees to a projectionist.

(c) In accordance with agreements with producers and distributors, a borrower shall show theatrical films to deaf persons only. However, this does not exclude the attendance of teachers of the deaf, interpreters, parents, and occasional guests as long as the audience is composed predominantly of deaf persons.

(20 U.S.C. 1451(a), (b)(1))
[53 FR 41085, Oct. 19, 1988]

EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

(34 Code of Federal Regulations Part 331)

Subpart A—General

Reg.
331.1 Educational media loan service for the handicapped program
331.2 Who is eligible to apply under the educational media loan service for the handicapped program?
331.3 What regulations apply to the educational media loan service for the handicapped program?
331.4 What definitions apply to the educational media loan service for the handicapped program?

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

331.30 How does one apply for the use of loan services?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met By A Borrower?

331.50 What are the limitations on use of the loan service?

(Authority: 20 U.S.C. 1452, unless otherwise noted.)
[Source: 45 FR 52131, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted]

Subpart A—General

Reg. 331.1 Educational media loan service for the handicapped program.

The Educational Media Loan Service for the Handicapped Program makes educational media available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of handicapped persons.

(20 U.S.C. 1452(a))
[53 FR 41085, Oct. 19, 1988]

Reg. 331.2 Who is eligible to apply under the educational media loan service for the handicapped program?

The following are eligible to apply to borrow educational media:

(a) Handicapped persons.

(b) Parents of handicapped persons.

(c) Other persons directly involved in activities for the advancement of handicapped persons in the United States.

(20 U.S.C. 1452(a))

Reg. 331.3 What regulations apply to the educational media loan service for the handicapped program?

The following regulations apply to the Educational Media Loan Service for the Handicapped Program:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 77 (General).

(b) The regulations in this Part 331.

(20 U.S.C. 1451-1453)

Reg. 331.4 What definitions apply to the educational media loan service for the handicapped program?

(a) *Definitions in EDGAR*. The following terms used in these regulations are defined in 34 CFR Part 77:
Nonprofit

(b) *Specific program definitions*. "Act" means the Education of the Handicapped Act (Title VI of Pub.L. 91-230 as amended).

"Borrower" means a user of loan service media.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

(20 U.S.C. 1451, 1452)
[53 FR 41085, Oct. 19, 1988]

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

Reg. 331.30 How does one apply for the use of loan services?

Eligible parties should contact the Division of Media Services of the Office of Special Education and Rehabilitative Services for information regarding an application for borrowing educational media.

(20 U.S.C. 1452(a))

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met By A Borrower?

Reg. 331.50 What are the limitations on use of the loan service?

(a) A borrower shall use the educational media for non-profit purposes only.

(b) A borrower shall ensure that no fee is charged to anyone for using the educational media.

(20 U.S.C. 1452(a))
[53 FR 41085, Oct. 19, 1988]

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

(34 Code of Federal Regulations Part 332)

Subpart A—General

Reg.
332.1 Educational media research, production, distribution, and training program
332.2 Who is eligible to apply under the educational media research, producion, distribution, and training program?
332.3 What regulations apply to the educational media research, production, distribution, and training program?
332.4 What definitions apply to the educational media research, production, distribution, and training program?

Subpart B—What Kinds Of Projects Does The Department Of Education Assist Under The Program?

332.10 Projects funded under the educational media research, production, distribution, and training program

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

332.30 How does the Secretary establish priorities annually?
332.31 How does the Secretary evaluate an application?
332.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met By A Grantee?

332.40 Final products

(Authority: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.)
[Source: 45 FR 52132, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted]

Subpart A—General

Reg. 332.1 Educational media research, production, distribution, and training program.

This program is designed to promote the educational advancement of handicapped persons by providing assistance for—

(a) Conducting research on the use of educational media for handicapped persons;

(b) Producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and

(c) Training persons in the use of educational media for the instruction of handicapped persons.

(20 U.S.C. 1451(a)(2))

Reg. 332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

(20 U.S.C. 1451, 1452)

Reg. 332.3 What regulations apply to the educational media research, production, distribution, and training program?

The provisions of 34 CFR Parts 75, 77, and this part 332 apply to this program.

(20 U.S.C. 1221e-3(a)(1))

Reg. 332.4 What definitions apply to the educational media research, production, distribution, and training program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Secretary
Nonprofit
Public

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub.L. 91-230 as amended).

"Distribution" means giving physical access to media and related materials and attendant equipment.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Media technology" means the methods and processes through which media are provided and encompasses demonstration of the use of modem communication technology in improving the general welfare of handicapped persons.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

"Production" means creating or changing media materials.

"Training" means activities designed to develop facility in the use of media materials and technology and in dissemination and marketing practices.

(20 U.S.C. 1451, 1452)

Subpart B—What Kinds Of Projects Does The Department Of Education Assist Under The Program?

Reg. 332.10 Projects funded under the educational media research, production, distribution, and training program.

Projects that may be supported include, but are not limited to the following:

(a) Research in the use of educational and training films and other educational media for handicapped persons. This may include research to—

(1) Identify the full range of special needs of handicapped persons related to educational media and media technology;

(2) Determine the need for—

(i) Educational media training;

(ii) Media information systems; and

(iii) Media delivery systems;

(3) Determine the extent to which the needs listed in paragraph (a)(2) of this section are being met; and

(4) Develop or demonstrate new or improved techniques that would contribute to the advancement and education of handicapped persons through the use of educational media or technology or both.

(b) Creation or adaption of educational media for use by handicapped persons, their parents, their actual or potential employers, and other persons directly involved in activities for the advancement of handicapped persons.

(c) Distribution of educational media. This may include the development of delivery systems.

(d) Dissemination of information about practices found effective in regard to the effective use of educational media and technology.

(e) Training of persons in the use and dissemination of educational media for the advancement of handicapped persons.

(20 U.S.C. 1452(b)(5))

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

Reg. 332.30 How does the Secretary establish priorities annually?

(a) The Secretary may select a priority for funding from among those activities listed in Reg. 332.10 by publishing a notice in the Federal Register.

(b) The Secretary may identify a particular handicapping condition or conditions as a priority for assistance under this program through publication of a notice in the Federal Register.

(20 U.S.C. 1451, 1452)

Reg. 332.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in Reg. 332.32. The extent to which an applicant addresses a priority is considered under the *need* criterion of Reg. 332.32(f).

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 1451)

Reg. 332.32 What selection criteria does the Secretary use?

(a) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(20 U.S.C. 1451, 1452)
[46 FR 3206, Jan. 14, 1981]

Subpart E—What Conditions Must Be Met By A Grantee?

Reg. 332.40 Final products.

The Secretary may require any grantee engaged in the actual development of materials to submit up to one original and two copies of those materials.

CENTERS FOR EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED PROGRAM

(34 Code of Federal Regulations Part 333)

Subpart A—General

Reg.
333.1 What is the Technology, Educational Media, and Materials for the Handicapped Program?
333.2 Who is eligible for an award?
333.3 What activities may the Secretary fund?
333.4 What priorities may the Secretary establish?
333.5 What regulations apply to this program?
333.6 What definitions apply to this program?
333.7-333.9 [Reserved]

Subpart B—[Reserved]

Subpart C—How Does The Secretary Make An Award?

333.20 How does the Secretary evaluate an application?
333.21 What selection criteria does the Secretary use to evaluate applications for research or evaluation activities?
333.22 What selection criteria does the Secretary use to evaluate applications for development or demonstration activities?
333.23-333.29 [Reserved]

Subpart D—What Conditions Must Be Met After An Award?

333.30 What materials must be submitted by the grantee?
333.31-333.29 [Reserved]

(Authority: 20 U.S.C. 1461-1462, unless otherwise noted.)
[Source: 53 FR 6952, Mar. 3, 1988, unless otherwise noted]

Subpart A—General

Reg. 333.1 What is the Technology, Educational Media, and Materials for the Handicapped Program?

The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with handicaps and the provision of early intervention services to infants and toddlers with handicaps.

(20 U.S.C. 1461)

Reg. 333.2 Who is eligible for an award?

The Secretary may award grants or contracts, or enter into cooperative agreements with, institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

(20 U.S.C. 1461)

Reg. 333.3 What activities may the Secretary fund?

The Secretary may fund activities that carry out the purpose of the program. These activities may include, but are not limited to, the following:

(a) Conducting research or evaluation on the need, use, design features, implementation, and effectiveness of technology, educational media, and materials.

(b) Demonstrating the effectiveness and the efficient implementation and use of technology, educational media, and materials.

(c) Designing and developing new technology, educational media, and materials.

(d) Adapting, modifying, and evaluating existing technology, educational media, and materials.

(e) Assisting the public and private sectors by providing advice and information to promote the development, use, distribution, and marketing of technology, educational media, and materials.

(f) Disseminating information through such means as publications, telecommunications, conferences, or presentations on the availability, quality, use, and effectiveness of technology, educational media, and materials.

(20 U.S.C. 1461)

Reg. 333.4 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the types of activities listed in Reg. 333.3.

(b) The Secretary announces these priorities in a notice published in the *Federal Register.*

(20 U.S.C. 1461)

Reg. 333.5 What regulations apply to this program?

(a) The following regulations apply to grants and cooperative agreements under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 333.

(b) Any contracts awarded under this program are subject to the Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(20 U.S.C. 1461)

Reg. 333.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secretary
State educational agency

(20 U.S.C. 1461)

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Handicapped children
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17), 1461)

(c) *Definitions in 34 CFR Part 303.* The following terms used in this part are defined in 34 CFR 303.10 and 303.13:

Early intervention services
Infants and toddlers with handicaps

(20 U.S.C. 1472(1))

Regs. 333.7-333.9 [Reserved]

Subpart B—[Reserved]

Subpart C—How Does The Secretary Make An Award?

Reg. 333.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in Reg. 333.21 or Reg. 333.22, as applicable.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(20 U.S.C. 1461)

Reg. 333.21 What selection criteria does the Secretary use to evaluate applications for research or evaluation activities?

The Secretary uses the following criteria to evaluate applications for research and evaluation projects:

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part, and considers the significance of the problem or issue to be addressed.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

The Secretary looks for—

(i) High quality in the design of the project;

(ii) Technical soundness of the research or evaluation plan, including if appropriate—

(A) The design;

(B) The proposed sample;

(C) The instrumentation; and

(D) The data analysis.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, or gender.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine he qualifications of the key personnel the applicant plans to ise on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel o be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources for the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates necessary access to target population necessary to conduct the research or evaluation.

(f) *Impact.* (5 points)

The Secretary reviews each application to determine—

(1) The probable impact of the proposed project in educating or providing early intervention services to infants, toddlers, children, and youth with handicaps; and

(2) The contribution that the project findings or products will make to current knowledge or practice.

(g) *Dissemination.* (5 points)

The Secretary reviews each application to determine the extent to which the findings and products will be disseminated to and used for the benefit of appropriate target groups.

(h) *Budget and cost-effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(20 U.S.C. 1461)

Reg. 333.22 What selection criteria does the Secretary use to evaluate applications for development or demonstration activities?

The Secretary uses the following criteria to evaluate applications for development and demonstration projects:

(a) *Importance.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The potential impact of the proposed project for providing innovative advancements to the problem or issues; and

(iii) Previous research findings related to the problem or issue.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine the quality and technical soundness of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the conceptual design of the project;

(ii) A clear specification of the procedures to be followed in carrying out the project;

(iii) The extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that can be quantified.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iii) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (5 points)

The Secretary reviews each application to determine the quality of the evaluation plan for assuring adequate performance measurement of project progress.

Cross Reference: 34 CFR 75.590, Evaluation by the grantee.

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources for the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates access to subjects necessary to conduct the proposed project.

(g) *Marketing and dissemination.* (10 points)

(1) The Secretary reviews each application to determine if there are adequate provisions for marketing or disseminating results.

(2) The Secretary considers—

(i) The provisions for marketing, replicating, or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.K

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(20 U.S.C. 1461)

Regs. 333.23-333.29 [Reserved]

Subpart D—What Conditions Must Be Met After An Award?

Reg. 333.30 What materials must be submitted by the grantee?

The Secretary may require any grantee engaged in the development of materials to submit a copy of those materials.

(20 U.S.C. 1461)

Regs. 333.31-333.39 [Reserved]

POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

(34 Code of Federal Regulations Part 338)

Subpart A—General

Reg.
338.1 What are the Postsecondary Education Programs for Handicapped Persons?
338.2 Who is eligible to apply for an award under these programs?
338.3 What regulations apply to these programs?
338.4 What definitions apply to these programs?
338.5-338.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under These Programs?

338.10 What kinds of activities may be supported under this part?
338.11-338.19 [Reserved]

Subpart C—How Does An Applicant Apply For A Grant?

338.20 What are the application requirements under this part?

Subpart D—How Does The Secretary Make A Grant?

338.30 What are the priorities considered for support by the Secretary under this part?
338.31 What are the selection criteria used to make awards?
338.32 Are awards for regional centers and model projects grographically dispersed?
338.33-338.39 [Reserved]

Subpart E—What Conditions Must A Grantee Meet?

338.40 What coordination and dissemination requirements must be met by a grantee?
338.41-338.49 [Reserved]

(Authority: 20 U.S.C. 1424a, unless otherwise noted.)
[Source: 49 FR 25991, June 25, 1984, unless otherwise noted.]

Subpart A—General

Reg. 338.1 What are the Postsecondary Education Programs for Handicapped Persons?

The Postsecondary Education Programs for Handicapped Persons provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(20 U.S.C. 1424a)

Reg. 338.2 Who is eligible to apply for an award under these programs?

State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies are eligible to apply for awards under this part.

(20 U.S.C. 1424a)

Reg. 338.3 What regulations apply to these programs?

The following regulations apply to awards under the Postsecondary Education Programs for Handicapped Persons:

(a) The regulations in this Part 338.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions);
(4) Part 78 (Education Appeal Board); and
(5) Part 79 (Intergovernmental Review of the Department of Education Programs and Activities).

(20 U.S.C. 1424a; 20 U.S.C. 3474(a))

Reg. 338.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Nonprofit
Project

Secretary
State educational agency.

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following term used in this part is defined in 34 CFR 300.5(b)(9):
Specific learning disability.

(20 U.S.C. 1401(a)(15))

(c) *Other definitions.* "Handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

(20 U.S.C. 1424a(b))

Regs. 338.5- 338.9 [Reserved]

Subpart B—What Kinds Of Projects Does The Secretary Assist Under These Programs?

Reg. 338.10 What kinds of activities may be supported under this part?

(a) The Secretary may support projects and activities under this part including but not limited to—

(1) The operation of centers for deaf individuals, including models of comprehensive supportive services to those individuals;

(2) Model projects of supportive services to individuals with handicapped conditions other than deafness that focus on—

(i) Specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers;

(ii) Expansion of the educational resources and services available to handicapped individuals in postsecondary programs;

(iii) Establishment of outreach activities to provide technical assistance and program information concerning access and support services for handicapped individuals; or

(iv) Development and dissemination of strategies and materials for the inservice training of faculty and administrative personnel involved in the integration of handicapped individuals in postsecondary institutions in order to improve their understanding of, and attitudes toward, those individuals;

(3) Evaluation of the effectiveness of programs carried out under this part to increase access to postsecondary education for handicapped individuals; and

(4) Establishment of projects to stimulate and develop model statewide, regional, and national programs to improve access for handicapped individuals including the fostering of cooperative and consortia arrangements.

(b) The following is an illustrative list of the types of supportive services which may be provided (in whole or in part) in model projects supported under this part:

(1) Interpreters.
(2) Tutors.
(3) Notetakers and readers.
(4) Wheelchair attendants.
(5) Guidance counselors.
(6) Speech and auditory training.
(7) Job placement and follow-up.
(8) Preparatory and orientation services.
(9) Supplementary learning experiences.
(10) Instructional media adaptations.
(11) Inservice training for teachers and other educational staff relating to the handicapped participants in the program.
(12) Administrative expenses, including employment of a director, administrator, or coordinator of the program.
(13) Planning and evaluation activities.

(c) Recipients may not use funds provided under this part for the payment of tuition or subsistence allowances.

(20 U.S.C. 1424a)
[49 FR 25991, June 25, 1984, as amended at 52 FR 6143, Mar. 2, 1987]

Regs. 338.11- 338.19 [Reserved]

Subpart C—How Does An Applicant Apply For A Grant?

Reg. 338.20 What are the application requirements under this part?

Applicants for funds under this part must contain—

(1)(a) A description of the handicapping condition(s) of the persons to be served, and

(b) The estimated number of handicapped individuals to be served annually in the program and specification of the resources and services needed to enable them to benefit from an educational program.

(20 U.S.C. 1424, 1424a)

Regs. 338.21- 338.29 [Reserved]

Subpart D—How Does The Secretary Make A Grant?

Reg. 338.30 What are the priorities considered for support by the Secretary under this part?

(a) For each fiscal year, the Secretary gives priority consideration to four regional centers for deaf individuals.

(b) For any fiscal year, the Secretary may select priorities from among those activities listed in § 338.10(a)(2)—(5).

(c) The Secretary may identify one or more handicapping conditions as a priority for assistance under this part by publishing a notice in the Federal Register.

(20 U.S.C. 1424a(a)(2))

Reg. 338.31 What are the selection criteria used to make awards?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

[See 34 CFR 75.590, *Evaluation by the grantee.*]

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding, as measured by evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue; and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact.* (15 points)

The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for handicapped individuals, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(20 U.S.C. 1424a)

Reg. 338.32 Are awards for regional centers and model projects geographically dispersed?

To the extent feasible, the Secretary, after applying the selection criteria in Sec. 338.31, geographically disperses awards for regional centers and model projects throughout the Nation in urban and rural areas.

(20 U.S.C. 1424a)
[52 FR 6142, Mar. 2, 1987]

Regs. 338.33-338.39 [Reserved]

Subpart E—What Conditions Must A Grantee Meet?

Reg. 338.40 What coordination and dissemination requirements must be met by a grantee?

Grantees operating regional centers and model projects shall coordinate their efforts with, and disseminate information about their activities to, the clearinghouse on postsecondary programs established under 34 CFR 320.1(b).

(20 U.S.C. 1424a)
[52 FR 6142, Mar. 2, 1987]

Regs. 338.41-338.49 [Reserved]

ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

(45 Code of Federal Regulations Part 85)

Reg.	
85.1	Purpose
85.2	Application
85.3	Definitions
85.4-85.10	[Reserved]
85.11	Self-evaluation
85.12	Notice
85.13-85.20	[Reserved]
85.21	General prohibitions against discrimination
85.22-85.30	[Reserved]
85.31	Employment
85.32-85.40	[Reserved]
85.41	Program accessibility: Discrimination prohibited
85.42	Program accessibility: Existing facilities
85.43	Program accessibility: New construction and alterations
85.44-85.50	[Reserved]
85.51	Communications
85.52-85.60	[Reserved]
85.61	Compliance procedures
85.62	Coordination and compliance responsibilities
85.63-85.99	[Reserved]

(Authority: 29 U.S.C. 794)

[Source: 53 FR 25603, July 8, 1988, unless otherwise noted.]

Reg. 85.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Reg. 85.2 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Reg. 85.3 Definitions.

For purposes of this part, the term—

"Agency" means the Department of Health and Human Services or any component part of the Department of Health and Human Services that conducts a program or activity covered by this part. "Component agency" means such component part.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's) interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with Handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; disgestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) "Has a record of such impairment" means has a history of, or is misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation.

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"OCR" means the Office for Civil Rights of the Department of Health and Human Services.

"OCR Director/Special Assistant" means the Director of the Office for Civil Rights, who serves concurrently as the Special Assistant to the Secretary for Civil Rights, or a designee of the Director/Special Assistant.

"Qualified individual with handicaps" means:

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a particular level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; and

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by Reg. 85.31.

"Secretary" means the Secretary of the Department of Health and Human Services or his/her designee.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-566, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Regs. 85.4-85.10 [Reserved]

Reg. 85.11 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications. Any new operating or staff divisions established within the agency shall have one year from the date of their establishment to carry out this evaluation.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection and copying—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

Reg. 85.12 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such a manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

Regs. 85.13-85.20 [Reserved]

Reg. 85.21 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with handicaps or to any class or individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aids, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of the handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

Regs. 85.22-85.30 [Reserved]

Reg. 85.31 Employment.

No qualified individuals with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (9 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs and activities.

Regs. 85.32-85.40 [Reserved]

Reg. 85.41 Program accessibility: Discrimination prohibited.

Except as otherwise provided in Reg. 85.42, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by such persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

Reg. 85.42 Program accessibility: Existing facilities.

(a) *General*. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with Reg. 85.42(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question, and must be accompanied by a written statement of reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*. (1) The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it.

(2) In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section within 60 days of the effective date of this part except where structural changes in facilities are undertaken; such changes shall be made within three years of the effective date of this part, but, in any event, as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities must be undertaken to achieve program accessibility, and it is not expected that such changes can be completed within six months, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for the implementation of the plan.

Reg. 84.43 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157) as established in 41 CFR 101-19.600 to 101-19.607 apply to buildings covered by this section.

Regs. 85.44-85.50 [Reserved]

Reg. 85.51 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with Reg. 85.51 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of teh conducted program or activity in question and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

Regs. 85.52-85.60 [Reserved]

Reg. 85.61 Compliance procedures.

(a) Except as provided in paragraph (c) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) Responsibility for the implementation and operation of this section shall be vested in the CCR Director/Special Assistant.

(c) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and HHS Instruction 1613-3. Part 1613 requires complainants to obtain pre-complaint counseling within 30 days of the alleged discriminatory act, and to file complaints within 15 days of the close of counseling. Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the Assistant Secretary for Personnel Administration.

(d) OCR shall accept the investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. OCR may extend this time for good cause.

(e) If OCR receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Federal government entity.

(f) OCR shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, OCR shall notify the complainant of the results of the investigations in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by Reg. 85.61(g). OCR may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the OCR Director/Special Assistant. Decisions on such appeals shall not be heard by the person who made the initial decision.

(j) OCR shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If OCR determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to a component agency or other Federal agencies, except that the authority for making the final determination may not be delegated.

[53 FR 26559, July 13, 1988]

Reg. 85.62 Coordination and compliance responsibilities.

(a) Each component agency shall be primarily responsible for compliance with this part in connection with the programs and activities it conducts.

(b) The OCR Director/Special Assistant shall have the overall responsibility to coordinate implementation of this part. The OCR Director/Special Assistant shall have authority to conduct investigations, to conduct compliance reviews, and to initiate such other actions as may be necessary to facilitate and ensure effective implementation of and compliance with, this part.

(c) If as a result of an investigation or in connection with any other compliance or implementation activity, the OCR Director/Special Assistant determines that a component agency appears to be in noncompliance with its responsibilities under this part, OCR will undertake appropriate action with the component agency to assure compliance. In the event that OCR and the component agency are unable to agree on a resolution of any particular matter, the matter shall be submitted to the Secretary for resolution.

Regs. 85.63-85.99 **[Reserved]**

PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

(45 Code of Federal Regulations Part 1304)

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APPENDIX A—Program Options for Project Head Start

APPENDIX B—Head Start Policy Manual: The Parents

(Authority: 88 Stat. 2304 (42 U.S.C. 2928h)
[Source: 40 FR 27562, June 30, 1975, unless otherwise noted.]

Subpart A—General

Reg. 1304.1-1 Purpose and application.

This part sets out the goals of the Head Start program as they may be achieved by the combined attainment of the objectives of the basic components of the program, with emphasis on the program performance standards necessary and required to attain those objectives. With the required development of plans covering the implementation of the performance standards, grantees and delegate agencies will have firm bases for operations most likely to lead to demonstrable benefits to children and their families. While compliance with the performance standards is required as a condition of Federal Head Start funding, it is expected that the standards will be largely self-enforcing. This part applies to all Head Start grantees and delegate agencies.

Reg. 1304.1-2 Definitions.

As used in this part:

(a) The term "OCD" means the Office of Child Development, Office of Human Development in the U.S. Department of Health and Human Services, and includes appropriate regional office staff.

(b) The term "responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his designee.

(c) The term "Dirctor" means the Director of the Office of Child Development.

(d) The term "grantee" means the public or private nonprofit agency which has been granted assistance by OCD to carry on a Head Start program.

(e) The term "delegate agency" means a public or private nonprofit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start program.

(f) The term "goal" means the ultimate purpose or interest toward which total Head Start program efforts are directed.

(g) The term "objective" means the ultimate purpose or interest toward which Head Start program component efforts are directed.

(h) The term "program performance standards" or "performance standards" means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(i) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

Reg. 1304.1-3 Head Start Program goals.

(a) The Head Start Program is based on the premise that all children share certain needs, and that children of low income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that

(2) The child's entire family, as well as the community must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.

(b) The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that enable a child to function optimally. The Head Start program is a comprehensive developmental approach to helping children achieve social competence. To the accomplishment of this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communication skills.

(4) The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.

(5) An increase in the ability of the child and the family to relate to each other and to others.

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

Reg. 1304.1-4 Performance standards plan development.

Each grantee and delegate agency shall develop a plan for implementing the performance standards prescribed in Subparts B, C, D, and E of this part for use in the operation of its Head Start program (hereinafter called "plan," or "performance standards plan"). The plan shall provide that the Head Start program covered thereby shall meet or exceed the performance standards. The plan shall be in writing and shall be developed by the appropriate professional Head Start staff of the grantee or delegate agency with cooperation from other Head Start staff, with technical assistance and advice as needed from personnel of the Regional Office and professional consultants, and with the advice and concurrence of the policy council or policy committee. The plan must be reviewed by grantee or delegate agency staff and the policy council or policy committee at least annually and revised and updated as may be necessary.

Reg. 1304.1-5 Performance standards implementation and enforcement.

(a) Grantees and delegate agencies must be in compliance with or exceed the performance standards prescribed in Subparts B, C, D, and E, of this part at the commencement of the grantee's program year next following July 1, 1975, effective date of the regulations in this part, or 6 months after that date, whichever is later, and thereafter, unless the period for full compliance is extended in accordance with paragraph (f) of this section.

(b) If the responsible HHS official as a result of information obtained from program self-evaluation, pre-review, or routine monitoring, is aware or has reason to believe that a Head Start program, with respect to performance standards other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, is not in compliance with performance standards, he shall notify the grantee promptly in writing of the deficiencies and inform the grantee that it, or if the deficiencies are in a Head Start program operated by a delegate agency, the delegate agency, has a period stated in the notice not to exceed 90 days to come into compliance. If the notice is with respect to a delegate agency, the grantee shall immediately notify the delegate agency and inform it of the time within which the deficiencies must be corrected. Upon receiving the notice the grantee or delegate agency shall immediately analyze its operations to determine how it might best comply with the performance standards. In this process it shall review, among other things, its utilization of all available local resources, and whether it is receiving the benefits of State and other Federal programs for which it is eligible and which are available. It shall review and realign where feasible program priorities, operations, and financial and manpower allocations. It shall also consider the possibility of choosing an alternate program option for the delivery of Head Start Services in accordance with OCD Notice N-30-334-1, Program Options for Project Head Start, attached hereto as Appendix A, which the grantee, with OCD concurrence, determines that it would be able to operate as a quality program in compliance with performance standards.

(c) The grantee or delegate agency shall report in writing in detail its efforts to meet the performance standards within the time given in the notice to the responsible HHS official. A delegate agency shall report through the grantee. If the reporting agency, grantee or delegate agency, determines that it is unable to comply with the performance standards, the responsible HHS official shall be notified promptly in writing by the grantee, which notice shall contain a description of the deficiencies not able to be corrected and the reasons therefor. If insufficient funding is included as a principal reason for inability to comply with performance standards, the notice shall specify the exact amount, and basis for, the funding deficit and efforts made to obtain funding from other sources.

(d) The responsible HHS official on the basis of the reports submitted pursuant to paragraph (c) of this section, will undertake to assist grantees, and delegate agencies through their grantees, to comply with the performance standards, including by furnishing or by recommending technical assistance.

(e) If the grantee or delegate agency has not complied with the performance standards, other than those for which the time for compliance has been extended in accordance with paragraph (f) of the section, within the period stated in the notice issued under paragraph (b) of this section, the grantee shall be notified promptly by the responsible HHS official of the commencement of suspension or termination proceedings or of the intention to deny refunding, as may be appropriate, under Part 1303 (appeals procedures) of this chapter.

(f) The time within which a grantee or delegate agency shall be required to correct deficiencies in implementation of the performance standards may be extended by the responsible HHS official to a maximum of one year, only with respect to the following deficiencies:

(1) The space per child provided by the Head Start program does not comply with the Education Services performance standard but there is no risk to the health or safety of the children:

(2) The Head Start program is unable to provide Medical or Dental Treatment Services as required by Health Services Performance Standards because funding is insufficient and there are no community or other resources available;

(3) The services of a mental health professional is not available or accessible to the program as required by the Health Services Performance Standards; or

(4) The deficient service is not able to be corrected within the 90 days notice period, notwithstanding full effort at compliance, because of lack of funds and outside community resources, but it is reasonable to expect that the services will be brought into compliance within the extended period, and, the overall high quality of the Head Start program otherwise will be maintained during the extension.

Subpart B—Education Services Objectives And Performance Standards

Reg. 1304.2-1 Education services objectives.

The objectives of the Education Service component of the Head Start program are to:

(a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.

(b) Integrate the educational aspects of the various Head Start components in the daily program of activities.

(c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.

(d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

(e) Identify and reinforce experience which occur in the home that parents can utilize as educational activities for their children.

Reg. 1304.2-2 Education services plan content: Operations.

(a) The education services component of the performance standards plan shall provide strategies for achieving the education objectives. In so doing it shall provide for program activities that include an organized series of experiences designed to meet the individual differences and needs of participating children, the special needs of handicapped children, the needs of specific educational priorities of the local population and the community. Program activities must be carried out in a manner to avoid sex role stereotyping. In addition, the plan shall provide methods for assisting parents in understanding and using alternative ways to foster learning and development of the children.

(b) The education services component of the plan shall provide for:

(1) *A supportive social and emotional climate* which:

(i) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group, activities;

(ii) Gives children many opportunities for success through program activities;

(iii) Provides an environment of acceptance which helps each child build ethnic pride, a positive self-concept, enhance his individual strengths, and develop facility in social relationships.

(2) Development of intellectual skills by:

(i) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing;

(ii) Promoting language understanding and use in an atmosphere that encourages easy communication among children and between children and adults;

(iii) Working toward recognition of the symbols for letters and numbers according to the individual developmental level of the children;

(iv) Encouraging children to organize their experiences and understand concepts; and

(v) Providing a balanced program of staff directed and child initiated activities.

(3) Promotion of physical growth by:

(i) Providing adequate indoor and outdoor space, materials, equipment, and time for children to use large and small muscles to increase their physical skills; and

(ii) Providing appropriate guidance while children are using equipment and materials in order to promote children's physical growth.

(c) The education services component of the plan shall provide for a program which is individualized to meet the special needs of children from various populations by:

(1) Having a curriculum which is relevant and reflective of the needs of the population served (bilingual/bicultural, multi-cultural, rural, urban, reservation, migrant, etc.);

(2) Having staff and program resources reflective of the racial and ethnic population of the children in the program.

(i) Including persons who speak the primary language of the children and are knowledgeable about their heritage; and, at a minimum, when a majority of the children speak a language other than English, at least one teacher or aide interacting regularly with the children must speak their language; and,

(ii) Where only a few children or a single child speak a language different from the rest, one adult in the center should be available to communicate in the native language;

(3) Including parents in curriculum development and having them serve as resource persons (e.g., for bilingual-bicultural activities).

(d) The education services component of the plan shall provide procedures for on-going observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs. It shall provide, also, for integrating the educational aspects of other Head Start components into the daily education services program.

(e) The plan shall provide methods for enhancing the knowledge and understanding of both staff and parents of the educational and developmental needs and activities of children in the program. These shall include:

(1) Parent participation in planning the education program, and in center, classroom and home program activities;

(2) Parent training in activities that can be used in the home to reinforce the learning and development of their children in the center;

(3) Parent training in the observation of growth and development of their children in the home environment and identification of and handling special developmental needs;

(4) Participation in staff and staff-parent conferences and the making of periodic home visits (no less than two) by members of the education staff;

(5) Staff and parent training, under a program jointly developed with all components of the Head Start program, in child development and behavioral developmental problems of preschool children; and

(6) Staff training in identification of and handling children with special needs and working with the parents of such children, and in coordinating relevant referral resources.

Reg. 1304.2-3 Education services plan content: Facilities.

(a) The education services component of the plan shall provide for a physical environment conducive to learning and reflective of the different stages of development of the children. Home-based projects must make affirmative efforts to achieve this environment. For center-based programs, space shall be organized into functional areas recognized by the children, and space, light, ventilation, heat, and other physical arrangements must be consistent with the health, safety, and developmental needs of the children. To comply with this standard:

(1) There shall be a safe and effective heating system;

(2) No highly flammable furnishings or decorations shall be used.

(3) Flammable and other dangerous materials and potential poisons shall be stored in locked cabinets or storage facilities accessible only to authorized persons;

(4) Emergency lighting shall be available in case of power failure;

(5) Approved, working fire extinguishers shall be readily available;

(6) Indoor and outdoor premises shall be kept clean and free, on a daily basis, of undesirable and hazardous material and conditions;

(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;

(8) Paint coatings in premises used for care of children shall be determined to assure the absence of a hazardous quantity of lead;

(9) Rooms shall be well lighted;

(10) A source of water approved by the appropriate local authority shall be available in the facility; and adequate toilets and handwashing facilities shall be available and easily reached by children;

(11) All sewage and liquid wastes shall be disposed of through a sewer system approved by an appropriate, responsible authority, and garbage and trash shall be stored in a safe and sanitary manner until collected;

(12) There shall be at least 35 square feet of indoor space per child available for the care of children (i.e., exclusive of bathrooms, halls, kitchen, and storage places). There shall be at least 75 square feet per child outdoors; and

(13) Adequate provisions shall be made for handicapped children to ensure their safety and comfort.

Evidence that the center meets or exceeds State or local licensing requirements for similar kinds of facilities for fire, health and safety shall be accepted as prima facie compliance with the fire, health and safety requirements of this section.

(b) The plan shall provide for appropriate and sufficient furniture, equipment and materials to meet the needs of the program, and for their arrangement in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. The equipment and materials shall be:

(1) Consistent with the specific educational objectives of the local program;

(2) Consistent with the cultural and ethnic background of the children;

(3) Geared to the age, ability, and developmental needs of the children;

(4) Safe, durable, and kept in good condition;

(5) Stored in a safe and orderly fashion when not in use;

(6) Accessible, attractive, and inviting to the children; and

(7) Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

Subpart C—Health Services Objectives And Performance Standards

Reg. 1304.3-1 Health services general objectives.

The general objectives of the health services component of the Head Start program are to:

(a) Provide a comprehensive health services program which includes a broad range of medical, dental, mental health and nutrition services to preschool children, including handicapped children, to assist the child's physical, emotional, cognitive and social development toward the overall goal of social competence.

(b) Promote preventive health services and early intervention.

(c) Provide the child's family with the necessary skills and insight and otherwise attempt to link the family to an ongoing health care system to ensure that the child continues to receive comprehensive health care even after leaving the Head Start program.

Reg. 1304.3-2 Health Services Advisory Committee.

The plan shall provide for the creation of a Health Services Advisory Committee whose purpose shall be advising in the planning, operation and evaluation of the health services program and which shall consist of Head Start parents and health services providers in the community and other specialists in the various health disciplines. (Existing committees may be modified or combined to carry out this function.)

Reg. 1304.3-3 Medical and dental history, screening, and examinations.

(a) The health services component of the performance standards plan shall provide that for each child enrolled in the Head Start program a complete medical, dental and developmental history will be obtained and recorded, a thorough health screening will be given, and medical and dental examinations will be performed. The plan will provide also for advance parent or guardian authorization for all health services under this subpart.

(b) Health screenings shall include:

(1) Growth assessment (head circumference up to two years old), height, weight and age.

(2) Vision testing.

(3) Hearing testing.

(4) Hemoglobin or hematocrit determination.

(5) Tuberculin testing indicated in OCD Head Start Guidance Material.

(6) Urinalysis.

(7) Based on community health problems, other selected screenings where appropriate, e.g., sickle cell anemia, lead poisoning, and intestinal parasites.

(8) Assessment of current immunization status.

(9) During the course of health screening, procedures must be in effect for identifying speech problems, determining their cause, and providing services.

(10) Identification of the special needs of handicapped children.

(c) Medical examinations for children shall include:

(1) Examination of all systems or regions which are made suspect by the history or screening test.

(2) Search for certain defects in specific regions common or important in this age, i.e., skin, eye, ear, nose, throat, heart, lungs, and groin (inguinal) area.

(d) The plan shall provide, also, in accordance with local and state health regulations that employed program staff have initial health examinations, periodical check-ups, and are found to be free from communicable disease; and, that voluntary staff be screened for tuberculosis.

Reg. 1304.3-4 Medical and dental treatment.

(a) The plan shall provide for treatment and follow-up services which include:

(1) Obtaining or arranging for treatment of all health problems detected. (Where funding is provided by non-Head Start funding sources there must be written documentation that such funds are used to the maximum feasible extent. Head Start funds may be used only when no other source of funding is available).

(2) Completion of all recommended immunizations—diphtheria, pertussis, tetanus (DPT), polio, measles, German measles. Mumps immunization shall be provided where appropriate.

(3) Obtaining or arranging for basic dental care services as follows:

(i) Dental examination.

(ii) Services required for the relief of pain or infection.

(iii) Restoration of decayed primary and permanent teeth.

(iv) Pulp therapy for primary and permanent teeth as necessary.

(v) Extraction of non-restorable teeth.

(vi) Dental prophylaxis and instruction in self-care oral hygiene procedures.

(vii) Application of topical fluoride in communities which lack adequate fluoride levels in the public water supply.

(b) There must be a plan of action for medical emergencies. (Indicated in OCD Head Start Guidance Material.)

Reg. 1304.3-5 Medical and dental records.

The plan shall provide for:

(a) The establishment and maintenance of individual health records which contain the child's medical and developmental history, screening results, medical and dental examination data, and evaluation of this material, and up-to-date information about treatment and follow-up;

(b) Forwarding, with parent consent, the records to either the school or health delivery system or both when the child leaves the program; and

(c) Giving parents a summary of the record which includes information on immunization and follow-up treatment; and

(d) Utilization of the Health Program Assessment Report (HPAR); and

(e) Assurance that in all cases parents will be told the nature of the data to be collected and the uses to which the data will be put, and that the users will be restricted to the stated purposes.

Reg. 1304.3-6 Health education.

(a) The plan shall provide for an organized health education program for program staff, parents and children which ensures that:

(1) Parents are provided with information about all available health resources;

(2) Parents are encouraged to become involved in the health care process relating to their child. One or both parents should be encouraged to accompany their child to medical and dental exams and appointments;

(3) Staff are taught and parents are provided the opportunity to learn the principles of preventive health, emergency first-aid measures, and safety practices;

(4) Health education is integrated into on-going classroom and other program activities.

(5) The children are familiarized with all health services they will receive prior to the delivery of those services.

Reg. 1304.3-7 Mental health objectives.

The objectives of the mental health part of the health services component of the Head Start program are to:

(a) Assist all children participating in the program in emotional, cognitive and social development toward the overall goal of social competence in coordination with the education program and other related component activities;

(b) Provide handicapped children and children with special needs with the necessary mental health services which will ensure that the child and family achieve the full benefits of participation in the program;

(c) Provide staff and parents with an understanding of child growth and development, an appreciation of individual differences, and the need for a supportive environment;

(d) Provide for prevention, early identification and early intervention in problems that interfere with a child's development;

(e) Develop a positive attitude toward mental health services and a recognition of the contribution of psychology, medicine, social services, education and other disciplines to the mental health program; and

(f) Mobilize community resources to serve children with problems that prevent them from coping with their environment.

Reg. 1304.3-8 Mental health services.

(a) The mental health part of the plan shall provide that a mental health professional shall be available, at least on a consultation basis, to the Head Start program and to the children. The mental health professional shall:

(1) Assist in planning mental health program activities;

(2) Train Head Start staff;

(3) Periodically observe children and consult with teachers and other staff;

(4) Advise and assist in developmental screening and assessment;

(5) Assist in providing special help for children with atypical behavior or development, including speech;

(6) Advise in the utilization of other community resources and referrals;

(7) Orient parents and work with them to achieve the objectives of the mental health program; and

(8) Take appropriate steps in conjunction with health and education services to refer children for diagnostic examination to determine whether their emotional or behavior problems have a physical basis.

(b) The plan shall also provide for:

(1) Attention to pertinent medical and family history of each child so that mental health services can be made readily available when needed;

(2) Use of existing community mental health resources;

(3) Coordination with the education services component to provide a program keyed to individual developmental levels;

(4) Confidentiality of records;

(5) Regular group meetings of parents and program staff;

(6) Parental consent for special mental health services;

(7) Opportunity for parents to obtain individual assistance; and,

(8) Active involvement of parents in planning and implementing the individual mental health needs of their children.

Reg. 1304.3-9 Nutrition objectives.

The objectives of the nutrition part of the health services component of the Head Start program are to:

(a) Help provide food which will help meet the child's daily nutritional needs in the child's home or in another clean and pleasant environment, recognizing individual differences and cultural patterns, and thereby promote sound physical, social, and emotional growth and development.

(b) Provide an environment for nutritional services which will support and promote the use of the feeding situation as an opportunity for learning;

(c) Help staff, child and family to understand the relationship of nutrition to health, factors which influence food practices, variety of ways to provide for nutritional needs and to apply this knowledge in the development of sound food habits even after leaving the Head Start program;

(d) Demonstrate the interrelationships of nutrition to other activities of the Head Start program and its contribution to the overall child development goals; and

(e) Involve all staff, parents and other community agencies as appropriate in meeting the child's nutritional needs so that nutritional care provided by Head Start complements and supplements that of the home and community.

Reg. 1304.3-10 Nutrition services.

(a) The nutrition services part of the health services component of the performance standards plan must identify the nutritional needs and problems of the children in the Head Start program and their families. In so doing account must be taken of:

(1) The nutrition assessment data (height, weight, hemoglobin hematocrit) obtained for each child;

(2) Information about family eating habits and special dietary needs and feeding problems, especially of handicapped children; and,

(3) Information about major community nutrition problems.

(b) The plan, designed to assist in meeting the daily nutritional needs of the children, shall provide that:

(1) Every child in a part-day program will receive a quantity of food in meals (preferably hot) and snacks which provides at least 1/3 of daily nutritional needs, with consideration for meeting any special needs of children, including the child with a handicapping condition;

(2) Every child in a full-day program will receive snack(s), lunch, and other meals as appropriate which will provide 1/2 to 2/3 of daily nutritional needs depending on the length of the program;

(3) All children in morning programs who have not received breakfast at the time they arrive at the Head Start program will be served a nourishing breakfast;

(4) The kinds of food served conform to minimum standards for meal patterns indicated in OCD Head Start Guidance Material;

(5) The quantities of food served conform to recommended amounts indicated in OCD Head Start guidance materials; and,

(6) Meal and snack periods are scheduled appropriately to meet children's needs and are posted along with the menus; e.g., breakfast must be served at least 2-1/2 hours before lunch, and snacks must be served at least 1-1/2 hours before lunch or supper.

(c) The plan shall undertake to assure that the nutrition services contribute to the development and socialization of the children by providing that:

(1) A variety of foods which broaden the child's food experience in addition to those that consider cultural and ethnic preferences is served;

(2) Food is not used as punishment or reward, and that children are encouraged but not forced to eat or taste;

(3) The size and number of servings of food reflect consideration of individual children's needs;

(4) Sufficient time is allowed for children to eat;

(5) Chairs, tables, and eating utensils are suitable for the size and developmental level of the children with special consideration for meeting the needs of children with handicapping conditions;

(6) Children and staff, including volunteers, eat together sharing the same menu and a socializing experience in a relaxed atmosphere; and

(7) Opportunity is provided for the involvement of children in activities related to meal service. (For example: family style service.)

(d) The plan shall set forth an organized nutrition education program for staff, parents, and children. This program shall assure that:

(1) Meal periods and food are planned to be used as an integral part of the total education program;

(2) Children participate in learning activities planned to effect the selection and enjoyment of a wide variety of nutritious foods;

(3) Families receive education in the selection and preparation of foods to meet family needs, guidance in home and money management and help in consumer education so that they can fulfill their major role and responsibility for the nutritional health of the family;

(4) All staff, including administrative, receive education in principles of nutrition and their application to child development and family health, and ways to create a good physical, social and emotional environment which supports and promotes development of sound food habits and their role in helping the child and family to achieve adequate nutrition.

(e) The plan shall make special provision for the involvement of parents and appropriate community agencies in planning, implementing, and evaluating the nutrition services. It shall provide that:

(1) The Policy Council or Committee and the Health Services Advisory Committee have opportunity to review and comment on the nutrition services;

(2) The nutritional status of the children will be discussed with their parents;

(3) Information about menus and nutrition activities will be shared regularly with parents;

(4) Parents are informed of the benefits of food assistance programs; and

(5) Community agencies are enlisted to assist eligible families participate in food assistance programs.

(f) The plan shall provide for compliance with applicable local, State, and Federal sanitation laws and regulations for food service operations including standards for storage, preparation and service of food, and health of food handlers, and for posting of evidence of such compliance. The plan shall provide, also, that vendors and caterers supplying food and beverages comply with similar applicable laws and regulations.

(g) The plan shall provide for direction of the nutrition services by a qualified full-time staff nutritionist or for periodic and regularly scheduled supervision by a qualified nutritionist or dietitian as defined in the Head Start Guidance Material. Also, the plan shall provide that all nutrition services staff will receive preservice and in-service training as necessary to demonstrate and maintain proficiency in menu planning, food purchasing, food preparation and storage, and sanitation and personal hygiene.

(h) The plan shall provide for the establishment and maintenance of records covering the nutrition services budget, expenditures for food, menus utilized, numbers and types of meals served daily with separate recordings for children and adults, inspection reports made by health authorities, recipes and any other information deemed necessary for efficient operation.

Subpart D—Social Services Objectives And Performance Standards

Reg. 1304.4-1 Social services objectives.

The objectives of the social services component of the performance standards plan are to:

(a) Establish and maintain an outreach and recruitment process which systematically insures enrollment of eligible children.

(b) Provide enrollment of eligible children regardless of race, sex, creed, color, national origin, or handicapping condition.

(c) Achieve parent participation in the center and home program and related activities.

(d) Assist the family in its own efforts to improve the condition and quality of family life.

(e) Make parents aware of community services and resources and facilitate their use.

Reg. 1304.4-2 Social services plan content.

(a) The social services plan shall provide procedures for:

(1) Recruitment of children, taking into account the demographic makeup of the community and the needs of the children and families;

(2) Recruitment of handicapped children;

(3) Providing or referral for appropriate counseling;

(4) Emergency assistance or crisis intervention;

(5) Furnishing information about available community services and how to use them;

(6) Follow-up to assure delivery of needed assistance;

(7) Establishing a role of advocacy and spokesman for Head Start families;

(8) Contacting of parent or guardian with respect to an enrolled child whose participation in the Head Start program is irregular or who has been absent four consecutive days; and

(9) Identification of the social service needs of Head Start families and working with other community agencies to develop programs to meet those needs.

(b) The plan shall provide for close cooperation with existing community resources including:

(1) Helping Head Start parent groups work with other neighborhood and community groups with similar concerns;

(2) Communicating to other community agencies the needs of Head Start families and ways of meeting these needs;

(3) Helping to assure better coordination, cooperation, and information sharing with community agencies;

(4) Calling attention to the inadequacies of existing community services, or to the need for additional services, and assisting in improving available services, or bringing in new services; and

(5) Preparing and making available a community resource list to Head Start staff and families.

(c) The plan shall provide for the establishment, maintenance, and confidentiality of records of up-to-date, pertinent family data, including completed enrollment forms, referral and follow-up reports, reports of contacts with other agencies, and reports of contacts with families.

Subpart E—Parent Involvement Objectives And Performance Standards

Reg. 1304.5-1 Parent involvement objectives.

The objectives of the parent involvement component of the performance standards plan are to:

(a) Provide a planned program of experiences and activities which support and enhance the parental role as the principal influence in their child's education and development.

(b) Provide a program that recognizes the parent as:

(1) Responsible guardians of their children's well being.

(2) Prime educators of their children.

(3) Contributors to the Head Start program and to their communities.

(c) Provide the following kinds of opportunities for parent participation:

(1) Direct involvement in decision making in program planning and operations.

(2) Participation in classroom and other program activities as paid employees, volunteers or observers.

(3) Activities for parents which they have helped to develop.

(4) Working with their own children in cooperation with Head Start staff.

Reg. 1304.5-2 Parent Involvement Plan content: Parent participation.

(a) The basic parent participation policy of the Head Start program, with which all Head Start programs must comply as a condition of being granted financial assistance, is contained in Head Start Policy Manual, Instruction I-31-Section B2, The Parents (OCD Transmittal Notice 70.2, dated August 10, 1970). This policy manual instruction is set forth in Appendix B to this part.

(b) The plan shall describe in detail the implementation of Head Start Policy Manual Instruction I-31-section B2, The Parents (Appendix B). The plan shall assure that participation of Head Start parents is voluntary and shall not be required as a condition of the child's enrollment.

Reg. 1304.5-3 Parent Involvement Plan content: Enhancing development of parenting skills.

The plan shall provide methods and opportunities for involving parents in:

(a) Experiences and activities which lead to enhancing the development of their skills, self-confidence, and sense of independence in fostering an environment in which their children can develop to their full potential.

(b) Experiences in child growth and development which will strengthen their role as the primary influence in their children's lives.

(c) Ways of providing educational and developmental activities for children in the home and community.

(d) Health, mental health, dental and nutrition education.

(e) Identification, and use, of family and community resources to meet the basic life support needs of the family.

(f) Identification of opportunities for continuing education which may lead towards self-enrichment and employment.

(g) Meeting with the Head Start teachers and other appropriate staff for discussion and assessment of their children's individual needs and progress.

Reg. 1304.5-4 Parent Involvement Plan content: Communications among program management, program staff, and parents.

(a) The plan shall provide for two-way communication between staff and parents carried out on a regular basis throughout the program year which provides information about the program and its services; program activities for the children; the policy groups; and resources within the program and the community. Communication must be designed and carried out in a way which reaches parents and staff effectively. Policy Groups, staff and parents must participate in the planning and development of the communication system used.

(b) The plan shall provide a system for the regular provision of information to members of Policy Groups. The purpose of such communication is to enable the Policy Group to make informed decisions in a timely and effective manner, to share professional expertise and generally to be provided with staff support. At a minimum, information provided will include:

(1) Timetable for planning, development, and submission of proposals;

(2) Head Start policies, guidelines, and other communications from the Office of Child Development;

(3) Financial reports and statements of funds expended in the Head Start account; and

(4) Work plans, grant applications, and personnel policies for Head Start.

(c) The entire Head Start staff shall share responsibility for providing assistance in the conduct of the above activities. In addition, Health Services, Education, and Social Services staff shall contribute their direct services to assist the Parent Involvement staff. If staff resources are not available, the necessary resources shall be sought within the community.

Reg. 1304.5-5 Parent Involvement Plan content: Parents, area residents, and the program.

The plan shall provide for:

(a) The establishment of effective procedures by which parents and area residents concerned will be enabled to influence the character of programs affecting their interests.

(b) Their regular participation in the implementation of such programs and,

(c) Technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

Appendix A—Program Options for Project Head Start

This appendix sets forth policy governing the development and implementation of variations in program design by local Head Start programs.

N-30-334-1-00 Purpose

This chapter sets forth the policy governing the development and implementation of variations in program design by local Head Start programs.

N-30-334-1-10 Scope

This policy applies to all Head Start grantees and delegate agencies that operate or propose to operate a full year program which provides a set of services to the same child or the same group of children for less than six hours a day. The policy will be applied to all applications submitted by such grantees or delegate agencies on or after April 1, 1973.

N-30-334-1-20 Policy

A. General Provision

Beginning in the fourth quarter of FY 1973 (April 1973), Head Start programs will be permitted and encouraged to consider several program models in addition to the standard Head Start model and select the program option best suited to the needs of the children served and the capabilities and resources of the program staff. The program options that are to be available for local selection are as follows:

The standard Head Start model.
Variations in center attendance.
Double sessions.
Home-based models.
Locally designed variations.

In principle, the Office of Child Development will support any option or design model provided a community can demonstrate in an acceptable proposal that it will result in a quality child development program at reasonable cost and meet Head Start guidelines. Any program option proposed must demonstrate that it meets each of the following conditions:

1. All policies stated in the Head Start Manual for Head Start components must be adhered to, with the exception of those points detailed in the descriptions of each of the options under Special Provisions. This policy is not to be interpreted in any way which would lessen the force of the present Head Start policy which states that, "Programs in which enrollment does not reflect the racial or ethnic composition of disadvantaged families in the area may not be funded...." (Head Start Manual 6108-1, page 8).

2. The design and selection of program options is to be based on an assessment of the child development needs and resources of the broader community as well as the needs of the current enrollees and their families.

3. The assignment of children to programs is to be determined by assessing such factors as age or developmental level, family situation, handicaps, health or learning problems, and previous school experience. Discussion with all parents about specific needs of their children and how best to meet those needs must be a priority in such an assessment.

4. Proposed options must be justified as consistent with good developmental practices.

5. All parents whose children participate in any options must be represented in their parent-group organizations in accordance with the revised parent involvement guidelines of the Head Start Policy Manual of August 10, 1970.

6. Program options must receive the approval of the Head Start Policy Council prior to submission to OCD.

7. There must be a specific training plan for staff and volunteers for any option chosen. It should address itself to the requirements and goals of the specific program variations being implemented.

8. The number of hours spent in the Head Start center will vary depending on the option chosen. In all cases, the center activities are to maximize opportunities for meeting the child's developmental needs.

9. The application must demonstrate the ability to conduct the program option within the limits of the current funding level unless funds are added to the program from other sources. However, some options may enable programs to serve more children within the same funding level. Careful planning and analysis will be necessary to determine the total cost associated with serving additional children. In such planning, the following areas should be considered:

a. Additional medical-dental costs;

b. Increased costs due to separate scheduling and operating practices in the area of pupil and staff transportation;

c. Additional staff for home visits and similar supportive activities; d. Need for additional recruitment effort;

e. Increased insurance costs;

f. Additions to parent activity funds.

B. Special Provisions

1. The Standard Head Start Model

Continuation of the present five-day-per-week, center-based classroom format will be optional. communities electing to continue this format are free to do so provided that they demonstrate through a careful assessment of their needs and capabilities that continuing the present program is in the best interests of the individual children and families served. If this assessment indicates that the present format is not adequately meeting local needs, the program is to consider whether these needs could be met more effectively by one or more of the other options.

2. Variations In Center Attendance

a. Head Start programs may elect to serve some or all children on a less than five-day-per-week basis. All children who attend Head Start on a partial basis must receive the same comprehensive developmental services as children attending the 5-day session, except as otherwise indicated. Shortened hours in the classroom may be supplemented by a parent education program or another option which would assist parents in developing their role as the first and most influential educators of their own children.

In planning for less than a five-day-week classroom schedule, careful consideration must be given to the underlying reasons for the attendance variations. Program planning must specifically address the following questions:

(1) What are the developmental needs of the child? Can they be met as effectively or more effectively by less than a five-day schedule?

(2) What are the needs and desires of the family? Would adjustment factors dictate consecutive-days attendance as opposed to, say, an every-other-day schedule?

(3) How does the curriculum plan fit the age and developmental needs of the children? Does the plan take into account differing needs of children of different ages, and varying needs of the same child over time?

(4) What kind of staffing pattern is required to obtain the program objectives?

b. In all situations where the children are in the center less than five days a week, the program must specify how they will receive comprehensive services. The following examples are illustrative of what this requires.

(1) One-third to one-half of the child's daily nutritional needs must be met each day he attends the center. Parents must, on request, be provided with simple, economical weekly menus and counseling on budgeting, food preparation and sanitation, as well as on how to involve children in food-related activities in the home.

(2) Provisions for complete medical and dental services must be made for all children in accordance with Head Start policies.

(3) Staff-family interaction, as central to the Head Start concept, must be included in any variation plan. Varied scheduling is to provide staff with new and additional opportunities for such interaction.

c. Staff utilization should contribute noticeably to program quality by maximizing staff talent, potential and expertise. Staff training goals must be identified and a training plan devised which will facilitate the implementation of the option. Such training should enable the staff to incorporate curriculum modifications necessary to accommodate the shorter week and to allow for the developmental differences between three-year-olds and five-year-olds.

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d. Several attendance variation models are possible in planning the delivery of Head Start services. Attendance schedules must be devised for the children in accordance with their assessed needs. Proposals must describe the methods by which children are assigned to their schedules. The following examples indicate possible scheduling variations. The list is not meant to be exhaustive.

(1) The four-day-week schedule provides four days for center-based activities plus an additional day for center staff to perform special activities, such as:

In-service training for staff, parents and volunteers.
Special experiences for children.
Home visits.
Two days in small groups in homes with parent training by the staff.

(2) Split-session schedules: Two regularly enrolled groups, each meeting two days per week, with the fifth day set aside for such things as in-service training or working with small groups of parents or children with special needs.

3. Double Sessions

Head Start programs are permitted to operate double sessions as an option. In no case shall the addition of other children result in fewer services for children currently in the program. A program shall not be required, nor shall it be permitted, to conduct double sessions solely as a cost-saving device. In addition to the policies which apply to full-year, part-day program, the following conditions must be met when the double sessions option is utilized:

a. Provisions must be made for a one-hour break between double-session classes when a single teaching staff conducts both halves of a double session. In addition, at least thirty minutes must be allotted prior to *each* session—whether or not a different teaching staff is used—to prepare for the session and set up the classroom environment, as well as to give individual attention to children entering and leaving the center. In some instances where schools serve as center sites, variations in scheduling double sessions may have to be considered.

b. The scheduling of children to attend morning or afternoon sessions must attempt to meet individual children's needs such as receptivity, necessity for naps, and other factors that might prevent full program benefit to some children.

c. Adequate time for staff consultation, planning (staff must plan for each session to meet the needs of particular children enrolled), in-service training and career development must be provided during the working schedule. In some cases, this can only be achieved by a variation in center attendance (e.g., a four-day-week for children).

d. Staff teaching both halves of a double session are not to have the primary responsibility for home visits unless some provision is made for substitute staff. In such cases, special provisions must be made for home visits.

e. Provisions must be made for an increase in supportive personnel and services in relation to the anticipated requirements of additional children and their families.

f. Provisions must be made for custodial services between sessions, including the cleaning of indoor and outdoor spaces.

g. Provisions must be made to maintain high food quality for both sessions. All children should have an opportunity to join in cooking and other food-related activities, preferably with the participation of the cook-manager.

4. Home-Based Models

Head Start grantees may elect to develop and incorporate a home-based model into their current program. Such models would focus on the parent as the primary factor in the child's development and the home as the central facility. These models may be designed along the lines of the Home Start demonstration programs initiated in fifteen communities in FY 1972 or on a model developed by the local community. The following conditions must be met by these grantees in implementing their programs:

a. *Comprehensive Services*

The same kinds of services which are available to children served in a center-based Head Start program will be available to children served by a home-based program. As in center-based programs, the home-based program must make every possible effort to identify, coordinate, integrate and utilize existing community resources and services (public, reduced-fee, or no-fee) in providing nutritional, health, social and psychological services for its children and their families.

(1) *Nutrition.* In home-based programs, whenever feasible children should receive the same nutrition services as in center-based programs with priority emphasis on nutrition education aimed at helping parents learn to make the best use of existing food resources through food planning, buying and cooking. If periodic, regular or incidental group sessions for children are held, every effort should be made to prepare and serve a nutritious snack or meal. When food is not available to a family, the home-based program must make every effort to put the family in touch with whatever community organization can help supply food. In addition, parents should be informed of all available family assistance programs and should be encouraged to participate in them.

Nutrition education must recognize cultural variations in food preferences and supplement and build upon these preferences rather than attempt to replace them. Thus, food items that are a regular part of a family's diet will be a major focal point of nutrition education.

(2) *Health.* Every effort must be made to provide health services through existing resources. Children in home-based programs are to receive the same health services as children in center-based programs.

As with the standard Head Start program, home-based programs shall provide linkages with existing health services for the entire family unit on an as-needed basis. However, Head Start funds may be used to provide health services only for the pre-school members of the family.

(3) *Psychological and Social Services.* Home-based programs shall provide needed services through existing community resources or within the sponsoring Head Start program in accordance with existing Head Start policies.

b. *Curriculum for Children*

A major emphasis of the program must be to help parents enhance the total development (including cognitive, language, social, emotional and physical) of all their children.

Whatever the educational program or philosophy of a home-based program, it must have a plan or system for developing "individualized" or "personalized" education programs for its children.

In addition, programs must provide material, supplies and equipment (such as tricycles, wagons, blocks, manipulative toys and books) to foster the children's development in their homes as needed. Provision for such materials may be made through lending, cooperative or purchase systems.

Group socialization experiences must be provided on a periodic basis for all children in home-based programs. The proposal must specify what kind of developmental activities will take place in the group setting.

Furthermore, the education component—as well as all program components—must meet the needs of the locale by taking into account appropriate local, ethnic, cultural and language characteristics.

c. *Parent Program*

Home-based programs reflect the concept that the parent is the first and most influential "educator" and "enabler" of his or her own children. Thus, home-based programs are to place emphasis on developing and expanding the "parenting" role of Head Start parents.

Home-based programs must give both parents (or parent substitutes and other appropriate family members) an opportunity to learn about such things as various approaches to child rearing, ways to stimulate and enhance their children's total development, ways to turn everyday experiences into constructive learning experiences for children, and specific information about health, nutrition and community resources.

d. *Evening and Weekend Services*

It is suggested that the program make provision for evening and weekend services to families when needed.

e. *Career Development*

Programs must provide career development opportunities for staff. For example, training of staff should qualify for academic credit or other appropriate credentials whenever possible.

f. *Service Delivery System*

In their proposals, grantees must describe their system for delivering health, nutrition, psychological and other services that are not provided primarily by the in-home caregiver.

g. *Staff Selection*

Proposals must describe the program's system for selecting staff in accord with the responsibilities assigned by the program to the staff member. For example, the staff visiting homes must be:

(1) Fluent in the language used by the families they serve;
(2) Responsive listeners;
(3) Knowledgeable about human development, family dynamics, and needs of children;
(4) Knowledgeable about all program components;
(5) Knowledgeable about community resources.

h. *Staff Development*

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Programs must submit a staff and volunteer recruitment plan and a training plan, including content of proposed pre- and in-service training programs, teaching method, descriptions of training staff or consultants, and provisions for continued in-service training. the career development plan must be designed to develop or increase staff member's knowledge about:

(1) Approaches to and techniques of working with parents;
(2) Other home-based or Home Start-like programs;
(3) All Head Start component areas.

i. volunteers

As in all other Head Start programs, the home-based programs must encourage and provide opportunity for the use of volunteers.

5. Locally Designed Options

In addition to the above models, local programs may elect to design and propose other program options which they find well suited to meet the needs of individual children and the families in their communities. Proposals for local program options must adhere to the following guidelines:

a. They must be derived from an analysis of the present standard Head Start model and must represent a more effective approach to meeting the needs of children in the community.

b. They must be consistent with good developmental practices.

c. They must be consistent with Head Start performance standards and must ensure that all components of Head Start are effectively delivered, unless they are operated as an adjunct to a program which delivers the full range of Head Start services, or unless they represent a special program thrust or circumscribed effort such as:

(1) Health Start-type program or other services such as sickle cell or lead paint screening.

(2) Summer follow-on services for handicapped high risk or other children with special needs.

Appendix B—Head Start Policy Manual: The Parents

This appendix sets forth policy governing the involvement of parents of Head Start children "...in the development, conduct, and overall program direction at the local level."

I-30-2 The Parents

A. Introduction

Head Start believes that the gains made by the child in Head Start must be understood and built upon by the family and the community. To achieve this goal, Head Start provides for the involvement of the child's parents and other members of the family in the experiences he receives in the child development center by giving them many opportunities for a richer appreciation of the young child's needs and how to satisfy them.

Many of the benefits of Head Start are rooted in "change". These changes must take place in the family itself, in the community, and in the attitudes of people and institutions that have an impact on both.

It is clear that the success of Head Start in bringing about substantial changes demands the fullest involvement of the parents, parental-substitutes, and families of children enrolled in its programs. This involvement begins when a Head Start program begins and should gain vigor and vitality as planning and activities go forward.

Successful parental involvement enters into every part of Head Start, influences other anti-poverty programs, helps bring about changes in institutions in the community, and works toward altering the social conditions that have formed the systems that surround the economically disadvantaged child and his family.

Project Head Start must continue to discover new ways for parents to become deeply involved in decision-making about the program and in the development of activities that they deem helpful and important in meeting their particular needs and conditions. For some parents, participation may begin on a simple level and move to more complex levels. For other parents the movement will be immediate, because of past experiences, into complex levels of sharing and giving. Every Head Start program is obligated to provide the channels through which such participation and involvement can be provided for and enriched.

Unless this happens, the goals of Head Start will not be achieved and the program itself will remain a creative experience for the preschool child in a setting that is not reinforced by needed changes in social systems into which the child will move after his Head Start experience.

This sharing in decisions for the future is one of the primary aims of parent participation and involvement in Project Head Start.

B. The Role of the Parents

Every Head Start Program Must Have Effective Parent Participation. There are at least four major kinds of parent participation in local Head Start programs.

1. PARTICIPATION IN THE PROCESS OF MAKING DECISIONS ABOUT THE NATURE AND OPERATION OF THE PROGRAM.
2. PARTICIPATION IN THE CLASSROOM AS PAID EMPLOYEES, VOLUNTEERS OR OBSERVERS.
3. ACTIVITIES FOR THE PARENTS WHICH THEY HAVE HELPED TO DEVELOP.
4. WORKING WITH THEIR CHILDREN IN COOPERATION WITH THE STAFF OF THE CENTER.

Each of these is essential to an effective Head Start program both at the grantee level and the delegate agency level. Every Head Start program must hire/designate a Coordinator of Parent Activities to help bring about appropriate parent participation. This staff member may be a volunteer in smaller communities.

1. Parent Participation in the Process of Making Decisions About the Nature and Operation of the Program

Head Start Policy Groups

a. *Structure*. The formal structure by which parents can participate in policy making and operation of the program will vary with the local administration structure of the program.

Normally, however, the Head Start policy groups will consist of the following:

1. *Head Start Center Committee*. This committee must be set up at the center level. Where centers have several classes, it is recommended that there also be parent class committees.

2. *Head Start Policy Committee*. This committee must be set up at the delegate agency level when the program is administered in whole or in part by such agencies.

3. *Head Start Policy Council*. This Council must be set up at the grantee level.

When a grantee has delegated the entire Head Start program to one Delegate Agency, it is not necessary to have a Policy Council in addition to a Delegate Agency Policy Committee. Instead one policy group serves both the Grant Board and the Delegate Agency Board.

b. *Composition*. Chart A describes the composition of each of these groups.

CHART A

Organization	Composition
1. Head Start Center Committee	1. Parents whose children are enrolled in that center.
2. Head Start Policy Committee (delegate agency)	2. At least 50% parents of Head Start children presently enrolled in that delegate agency program plus representatives of the community.[1]
3. Head Start Policy Council (grantee)	3. At least 50% of Head Start children presently enrolled in that grantee's program plus representatives of the community.[2]

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[1] *Representatives of the Community (Delegate Agency level)*: A representative of neighborhood community groups (public and private) and of local neighborhood community or professional organizations, which have a concern for children of low income families and can contribute to the development of the program. The number of such representatives will vary depending on the number of organizations which should appropriately be represented. The Delegate Agency determines the composition of their committee (within the above guidelines) and methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on delegate agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee.

[2] *Representatives of the Community (Grantee Agency level)*: A representative of major agencies (public and private) and major community civic or professional organizations which have

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a concern for children of low income families and can contribute to the program. The number of such representatives will vary, depending on the number of organizations which should appropriately be represented. The applicant agency determines the composition of the council (within the above guidelines) and the methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on grantee agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee or council.

Special Notes

1. All parents serving on policy groups must be elected by parents of Head Start children currently enrolled in the program.

2. It is strongly recommended that the community action agency board have representation from the Head Start Policy Council to assure coordination of Head Start activities with other CAA programs. Conversely, community action agency board representation on the Policy Council is also recommended.

3. It is important that the membership of policy groups be rotated to assure a regular influx of new ideas into the program. For this purpose, terms of membership must be limited to no more than three years.

4. No staff member (nor members of their families as defined in CAP Memo 23A) of the applicant or delegate agencies shall serve on the council or committee in a voting capacity. Staff members may attend the meetings of councils or committees in a consultative non-voting capacity upon request of the council or committee.

5. Every corporate board operating a Head Start program must have a Policy Committee or Council as defined by HHS. The corporate body and the Policy Committee or Council must not be one and the same.

6. Policy groups for summer programs present a special problem because of the difficulty of electing parent representatives in advance. Therefore, the policy group for one summer program must remain in office until its successors have been elected and taken office. The group from the former program should meet frequently between the end of the program and the election of new members to assure some measure of program continuity. These meetings should be for the purpose of (a) assuring appropriate follow up of the children (b) aiding the development of the upcoming summer Head Start program, (c) writing of the application, (d) hiring of the director and establishment of criteria for hiring staff and, when necessary (e) orientation of the new members. In short, the policy group from a former program must not be dissolved until a new group is elected. The expertise of those parents who have previously served should be used whenever possible.

c. *Functions*. The following paragraphs and charts describe the minimum functions and degrees of responsibility for the various policy groups involved in administration of local Head Start programs. *Local groups may negotiate for additional functions and a greater share of responsibility if all parties agree*. All such agreements are subject to such limitations as may be called for by HHS policy. Questions about this should be referred to your HHS regional office.

(1) The Head Start Center Committee shall carry out at least the following minimum responsibilities:

(a) Assists teacher, center director, and all other persons responsible for the development and operation of every component including curriculum in the Head Start program.

(b) Works closely with classroom teachers and all other component staff to carry out the daily activities program.

(c) Plans, conducts, and participates in informal as well as formal programs and activities for center parents and staff.

(d) Participates in recruiting and screening of center employees within guidelines established by HHS, the Grantee Council and Board, and Delegate Agency Committee and Board.

(2) *The Head Start Policy Committee*. Chart B outlines the major management functions connected with local Head Start program administered by delegate agencies and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the committee shall:

(a) Serve as a link between public and private organization, the grantee Policy Council, the Delegate Agency Board of Directors, and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Assist in communicating with parents and encouraging their participation in the program.

(e) Aid in recruiting volunteer services from parents, community residents and community organizations, and assist in the mobilization of community resources to meet identified needs.

(f) Administer the Parent Activity funds.

(3) *The Head Start Policy Council*. Chart C outlines the major management functions connected with the Head Start program at the grantee level, whether it be a community action or limited purpose agency, and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the Council shall:

(a) Serve as a link between public and private organizations, the Delegate Agency Policy Committees, Neighborhood Councils, the Grantee Board of Directors and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Approve the selection of Delegate Agencies.

(e) Recruit volunteer services from parents, community residents and community organizations, and mobilizes community resources to meet identified needs.

(f) Distribute Parent Activity funds to Policy Committees.

It may not be easy for Head Start directors and professional staff to share responsibility when decisions must be made. Even when they are committed to involving parents, the Head Start staff must take care to avoid dominating meetings by force of their greater training and experience in the process of decisionmaking. At these meetings, professionals may be tempted to do most of the talking. They must learn to ask parents for their ideas, and listen with attention, patience and understanding. Self-confidence and self-respect are powerful motivating forces. Activities which bring out these qualities in parents can prove invaluable in improving family life of young children from low income homes.

Members of Head Start Policy Groups whose family income falls below the "poverty line index" may receive meeting allowances or be reimbursed for travel, per diem, meal and baby sitting expenses incurred because of Policy Group meetings. The procedures necessary to secure reimbursement funds and their regulations are detailed in OEO Instruction #6803-1.

2. Participation in the Classroom as Paid Employees, Volunteers or Observers

Head Start classes must be open to parents at times reasonable and convenient to them. There are very few occasions when the presence of a limited number of parents would present any problem in operation of the program.

Having parents in the classroom has three advantages. It:

a. Gives the parents a better understanding of what the center is doing for the children and the kinds of home assistance they may require.

b. Shows the child the depth of his parents concern.

c. Gives the staff an opportunity to know the parents better and to learn from them.

There are, of course, many center activities outside the classroom (e.g., field trips, clinic visits, social occasions) in which the presence of parents is equally desirable.

Parents are one of the categories of persons who must receive preference for employment as non-professionals. Participation as volunteers may also be possible for many parents. Experience obtained as a volunteer may be helpful in qualifying for a non-professional employment. At a minimum parents should be encouraged to observe classes several times. In order to permit fathers to observe it might be a good idea to have some parts of the program in the evening or on weekends.

Head Start Centers are encouraged to set aside space within the Center which can be used by parents for meetings and staff conferences.

3. Activities for Parents Which They Have Helped to Develop

Head Start programs must develop a plan for parent education programs which are responsive to needs expressed by the parents themselves. Other community agencies should be encouraged to assist in the planning and implementation of these programs.

Parents may also wish to work together on community problems of common concern such as health, housing, education and welfare and to sponsor activities and programs around interests expressed by the group. Policy Com-

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mittees must anticipate such needs when developing program proposals and include parent activity funds to cover the cost of parent sponsored activities.

4. Working with Their Children in Their Own Home in Connection with the Staff of the Center

HHS requires that each grantee make home visits a part of its program when parents permit such visits. Teachers should visit parents of summer children a minimum of once; in full year programs there should be at least three visits, if the parents have consented to such home visits. (Education staff are now required to make no less than two home visits during a given program year in accordance with Sec. 1304.2-2(e)(4). In those rare cases where a double shift has been approved for teachers it may be necessary to use other types of personnel to make home visits. Personnel, such as teacher aides, health aides and social workers may also make home visits with, or independently of, the teaching staff but coordinated through the parent program staff in order to eliminate uncoordinated visits.

Head Start staff should develop activities to be used at home by other family members that will reinforce and support the child's total Head Start experience.

Staff, parents and children will all benefit from home visits and activities. Grantees shall not require that parents permit home visits as a condition of the child's participation in Head Start. However, every effort must be made to explain the advantages of visits to parents.

Definitions as used on charts B and C.

A. *General Responsibility*. The individual or group with legal and fiscal responsibility guides and directs the carrying out of the function described through the person or group given operating responsibility.

B. *Operating Responsibility*. The individual or group that is directly responsible for carrying out or performing the function, consistent with the general guidance and direction of the individual or group holding general responsibility.

C. *Must Approve or Disapprove*. The individual or group (other than persons or groups holding general and operating responsibility, A and B above) must approve before the decision is finalized or action taken. The individual or group must also have been consulted in the decision making process prior to the point of seeking approval.

If they do not approve, the proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups or individuals.

D. *Must be Consulted*. The individual or group must be called upon before any decision is made or approval is granted to give advice or information but not to make the decision or grant approval.

E. *May be Consulted*. The individual or group may be called upon for information, advice or recommendations by those individuals or groups having general responsibility or operating responsibility.

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	Chart B—Delegate agency				Chart C—Grantee agency			
Function	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
I. PLANNING								
(a) Identify child development needs in the area to be served (by CAA[1] if not delegated)	A	B	D	D	A	B	D	D
(b) Establish goals of Head Start program and develop ways to meet them within HHS guidelines	A	C	C	B	A	C	C	B
(c) Determine delegate agencies and areas in the community in which Head Start programs will operate					A	D	C	B
(d) Determine Location of centers or classes	A	D	C	B				
(e) Develop plans to use all available community resources in Head Start	A	D	C	B	A	D	C	B
(f) Establish criteria for selection of children within applicable laws and HHS guidelines					A	C	C	B
(g) Develop plan for recruitment of children	A	C	C					
II. GENERAL ADMINISTRATION								
(a) Determine the composition of the appropriate policy group and the method for setting it up (within HHS guidelines)	A	B	C	D	A	B	C	D
(b) Determine what services should be provided to Head Start from the CAA[1] central office and the neighborhood centers					A	B	C	D
(c) Determine what services should be provided to Head Start from delegate agency	A	B	C	D				
(d) Establish a method of hearing and resolving community complaints about the Head Start program	D	C	A	B	D	C	A	B
(e) Direct the CAA[1] Head Start staff in day-to-day operations					E	A	E	B
(f) Direct the delegate agency Head Start staff in day-to-day operations	E	A	E	B				
(g) Insure that standards for acquiring space, equipment, and supplies are met	A	D	D	B	A	D	D	B
III. PERSONNEL ADMINISTRATION								
(a) Determine Head Start personnel policies (including establishment of hiring and firing criteria for Head Start staff, career development plans, and employee grievance procedures)								
Grantee agency					A	C	C	B
Delegate agency	A	C	C	B				
(b) Hire and fire Head Start Director of grantee agency					A	B	C	
(c) Hire and fire Head Start staff of grantee agency					E	A	C	B
(d) Hire and fire Head Start Director of delegate agency	A	B	C					
(e) Hire and fire Head Start staff of delegate agency	E	A	C	B				
IV. GRANT APPLICATION PROCESS								
(a) Prepare request for funds and proposed work program:								
Prior to sending to CAA[1]	A	C	C	B				
Prior to sending to HHS					A	C	C	B
(b) Make major changes in budget and work program while program is in operation	A	C	C	B	A	C	C	B
(c) Provide information needed for prereview to policy council	A	D	C	B				
(d) Provide information needed for prereview to HHS					A	D	C	B
V. EVALUATION								
Conduct self-evaluation of agency's Head Start program	A	D	B	D	A	D	B	D

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[1] CAA or general term "grantee".

A=General responsibility
B=Operating responsibility
C=Must approve or disapprove
D=Must be consulted
E=May be consulted

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ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEAD START

(45 Code of Federal Regulations Part 1305)

Reg.

1305.1	Purpose and Scope
1305.2	Definitions
1305.3	Age eligibility of children
1305.4	Family income eligibility
1305.5	Handicapped children
1305.6	Enrollment and re-enrollment
1305.7	Income verification
1305.8	Fees policy

(Authority: 88 Stat. 2300, et seq. (42 U.S.C. 2921, et seq.)
[Source: 43 FR 14936, April 7, 1978, unless otherwise noted.]

Reg. 1305.1 Purpose and scope.

This part prescribes eligibility requirements, with respect to age and family income, for enrollment and participation of children in Head Start programs.

Reg. 1305.2 Definitions.

(a) Terms defined in Part 1301 of this chapter have the same meaning when used in this part, unless the context indicates otherwise.

(b) As used in this part, unless the context indicates otherwise:

(1) The term "income guidelines" means the official poverty line specified by the U.S. Office of Management and Budget.

(2) The term "low-income family" means a family whose total annual income before taxes is equal to, or less than, the income guidelines. The term also includes a family that is receiving public assistance even if family income exceeds the income guidelines.

(3) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children who by reason thereof, require special education and related services.

(4) The term "enrollment year" means the period of time not to exceed twelve months, during which a Head Start program provides classroom or other program activities for children enrolled in the program.

(5) The term "family" means all persons living in the same household who are: (i) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in a Head Start program, and (ii) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(6) The term "income" means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, social security benefits, unemployment compensation, and public assistance benefits. With respect to a child in foster care, family income is the amount paid to the foster family on behalf of the child by a public or private agency.

Reg. 1305.3 Age eligibility of children.

Unless the Head Start agency's approved grant provides otherwise, only those children between three years of age and the age of compulsory school attendance are eligible to enroll and participate in the Head Start program.

Reg. 1305.4 Family income eligibility.

At least 90 percent of the children who are enrolled in each Head Start program shall be from low-income families. If applications for admission to a Head Start program are received for more children from low-income families than the Head Start program can accommodate, the children from the lowest income families shall be given preference.

Reg. 1305.5 Handicapped children.

No less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for handicapped children who are eligible to participate under Reg. 1305.3.

Reg. 1305.6 Enrollment and re-enrollment.

(a) An application for enrollment of children in a Head Start program may be made at any time during the program year. The Head Start agency must make an eligibility determination prior to permitting a child to participate in the Head Start program.

(b) If a child has been found eligible and is participating in a Head Start program, he or she remains eligible through the enrollment year with respect to which such eligibility determination was made and the immediately succeeding enrollment year.

Reg. 1305.7 Income verification.

(a) The family income shall be verified by a Head Start agency before determining that a child is eligible to participate in the program.

(b) Verification shall include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status and recipients of public assistance.

(c) A signed statement by an employee of the Head Start agency, identifying which of these documents was examined and stating that the child is eligible to participate in the program, shall be maintained to indicate that verification has been made.

Reg. 1305.8 Fees policy.

A Head Start agency shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start agency may accept the voluntary payments. Under no circumstances shall a Head Start agency solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

(45 Code of Federal Regulations Part 1385)

Reg.

1385.1 General
1385.2 Purpose of the regulations
1385.3 Definitions
1385.4 Rights of persons with developmental disabilities
1385.5 Recovery of Federal funds used for construction of facilities
1385.6 Employment of handicapped individuals
1385.7 Waivers
1385.8 Formula for determining allotments
1385.9 Grants administration requirements

(Authority: 42 U.S.C. 6000 et seq.)
[Source: 49 FR 11777, Mar. 27, 1984, unless otherwise noted.]

Reg. 1385.1 General.

Except as specified in Reg. 1385.4, the requirements in this Part are applicable to the following programs and projects:

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities.

(b) State Basic Program for Planning Priority Area Activities for Persons with Developmental Disabilities.

(c) Projects of National Significance; and

(d) University Affiliated Programs [UAPs].

[52 FR 44845, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989]

Reg. 1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

Reg. 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended [42 U.S.C. 6000 et seq.]

ADD means the Administration on Developmental Disabilities, within the Office of Human Development Services.

Commissioner means the Commissioner of the Administration on Development Disabilities, Office of Human Development Services, Department of Health and Human Services or his or her designee.

Department means the U.S. Department of Health and Human Services (HHS).

Fiscal year means the Federal fiscal year unless otherwise specified.

Governor means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

Secretary means the Secretary of the Department of Health and Human Services.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44845, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989]

Reg. 1385.4 Rights of persons with developmental disabilities.

(a) Section 110 of the Act, *Rights of the Developmentally Disabled* (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with section 122(b)(6)(C) of the Act (42 U.S.C. 6022(b)(6)(C), regarding the rights of developmentally disabled persons, the State must meet the requirements of Reg. 1386.30(e)(3) of the regulations.

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

[52 FR 44845, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989]

Reg. 1385.5 Recovery of Federal funds used for construction of facilities.

(a) The State Council or the appropriate university affiliated facility official must notify the Commissioner in advance in writing if a facility described in section 105 of the act:

(1) Will be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity; or

(2) Will cease to be a public or other nonprofit facility for persons with developmental disabilities.

(b) The State Council or the appropriate UAP official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

(c) Recovery of funds will include the charging of interest in accordance with HHS claims collection regulations in 45 CFR Part 30 and the Departmental Debt Collection Procedures (45 FR 61792, September 17, 1980) available from the

Administration on Developmental Disabilities, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

[52 FR 44846, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989]

Reg. 1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. Failure to comply with section 109 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of Part 1386.

[52 FR 44846, Nov. 20, 1987]

Reg. 1385.7 Waivers.

Applications for a waiver of the provisions of sections 105 of the Act (42 U.S.C. 6004) with respect to alternative use of facilities constructed with funds under the Act may be granted by the Commissioner if the following criteria are met:

(a) The waiver request provides a basis for alternative use or sale of a facility constructed with funds appropriated under the Act.

(b) The clients served in the facility are or will be served in a facility of equal or higher quality.

(c) If the waiver request is for an alternate use, that use must serve some other public purpose.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

Reg. 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the purpose of the basic State program (see Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities) and the protection and advocacy system (see Subpart B—State System for Protection and Advocacy of Individual Rights) on the following basis:

(a) Two-thirds of the amount appropriated are allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated is allotted to each State on the basis of the relative need for services of persons with developmental disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (Section 202(d)(1)(B)(ii) of the Social Security Act), (42 U.S.C. 402(d)(1)(B)(ii)).

Reg. 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to special project grants under section 162 of the Act (42 U.S.C. 6082).

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of Human Subjects.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings Act under Part 80 of this title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.
45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) The Departmental Grant Appeals Board also has jurisdiction over appeals by grantees who have received grants under the University Affiliated program or for a Special Project.

(c) The Departmental Grant Appeals also has jurisdiction to decide appeals brought by the State concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by State or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs—the Basic State Grant program and the State Protection and Advocacy system. Appeals filed by States shall be decided in accordance with 45 CFR Part 16.

(d) In making audits, examinations, excerpts and transcripts of records of grantees and subgrantees, including the protection and advocacy system, as provided for in 45 CFR Part 74, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

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FORMULA GRANT PROGRAMS

(45 Code of Federal Regulations Part 1386)

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(Authority: 42 U.S.C. 6000 et seq.)
[Source: 49 FR 11779, Mar. 27, 1984, unless otherwise noted.]

Subpart A—Basic Requirements

Reg. 1386.1 General.

All rules under this subpart are applicable to both the Protection and Advocacy System and State Basic Support Program.

Reg. 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) Protection and Advocacy offices may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs mean expenses for court costs, depositions, expert witnesses fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented a developmentally disabled person (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy system. All funds made available to the State Basic Support Program and to P&A System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within the same fiscal year in which the funds were originally obligated.

[54 FR 47985, Nov. 20, 1989]

Reg. 1386.3 Liquidation of obligations.

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

Reg. 1386.4 Eligibility for services.

(a) All persons who meet all of the criteria of the definition of developmental disability set forth in section 102 of the Act (42 U.S.C. 6001) are eligible for available and appropriate services.

(b) In addition, a person who met the definition of developmental disability as provided in Pub. L. 94-103 and who was actually receiving one or more services under the Act during the Period October 1, 1968 through November 30, 1978, is eligible to continue to receive services, provided that person's Individual Habilitation Plan (IHP) indicates a continuing need for services.

[49 FR 11779, Mar. 27, 1984, as amended at 49 FR 18098, Apr. 27, 1984]

Subpart B—State System For Protection And Advocacy Of Individual Rights

Reg. 1386.20 Designated State Protection and Advocacy Office.

(a) The Governor or other State official or entity so empowered must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy system.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d) Prior to any redesignation of the agency which administers the State Protection and Advocacy system, the Governor or a State official empowered by the Governor or State legislature must give public notice of the intent to redesignate and provide an opportunity for public comment on the proposed redesignation. The public notice must include:

(1) The Federal requirements for the Protection and Advocacy program (section 142 of the Act);

(2) The goals and function of the State's Protection and Advocacy program;

(3) Name of current designated agency;

(4) A description of the current Protection and Advocacy agency and the system it administers;

(5) The reason(s) for proposing redesignation;

(6) Effective date of proposed redesignation;

(7) The name of the agency proposed to administer the State Protection and Advocacy program; and

(8) A description of the system which the new Protection and Advocacy agency would administer.

(e) Following receipt of comments from the public, the Governor or a State official empowered by the Governor or State legislature must submit the following information to the Commissioner:

(1) Documentation that the system was redesignated for good cause; such documentation must clearly demonstrate that the existing Protection and Advocacy agency was not redesignated for any actions or activities undertaken which were consistent with section 142 of the Act, these regulations and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99-319.

(2) Assurance that the designated Protection and Advocacy system meets the requirements of the statute and the regulations.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

Reg. 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy system which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy system must:

(1) Keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection and advocacy system for purposes of carrying out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege.

(2) Have written policies governing access to duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

[49 FR 11779, Mar. 27, 1984, as amended at 53 FR 44846, Nov. 20, 1987]

Reg. 1386.22 [Reserved]

Reg. 1386.23 Periodic reports: Protection and Advocacy System.

The State Protection and Advocacy Agency must submit:

(a) Written assurance of compliance with section 142 of the Act will be required on a one time only basis. These assurances to the Commissioner must be signed by the Governor or a State official or entity empowered by the Governor or State legislature to provide such assurance. These assurances will remain in effect unless changes occur within the State which will affect the functioning of the Protection and Advocacy system in which case an amendment is required 30 days prior to the effective date of the change. All assurances and/or amendments may be provided in a format of the State's choice and will remain in effect as long as the State receives funds under the Act.

(b) An annual report to the Commissioner describing the activities and accomplishments carried out under the system during the previous year.

(c) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

(Information collection requirements contained in paragraph (b) under control number 0980-0160 and paragraph (c) under control number 0348-0039 are approved by the Office of Management and Budget.)

[52 FR 44846, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

Reg. 1386.24 Non-allowable costs for the Protection and Advocacy System.

Federal financial participation is not allowable for:

(a) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(b) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

[54 FR 44847, Nov. 20, 1987]

Subpart C—State Plan For Provision Of Services For Persons With Developmental Disabilities

Reg. 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements or sections 122 and 124(a) of the Act (42 U.S.C. 6022 and 6024(a)(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

(c) The State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) responsible for administration of the plan within the designated State agency or agencies;

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(d) The State plan must be reviewed at least once every three years.

(e) The State plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding:

(2) The State meets the requirements regarding individual habilitation plans as set forth in section 123 of the Act (42 U.S.C. 6023) and

(3) The human rights of developmentally disabled persons will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(4) Each Planning Council may, at its option, hire staff and obtain the services of other technical, professional, and clerical staff that the council determines is necessary to carry out its functions. The designated State Agency shall disburse funds for such personnel consistent with State Law.

(Information collection requirements contained in paragraph (c) under control number 0980-0162 and paragraph (e) under control number 0980-0139 are approved by the Office of Management and Budget)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

Reg. 1386.31 Plan submittal and approval.

(a) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(b) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(c) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(d) Amendments to the State plan are required when substantive changes are contemplated in plan content.

Reg. 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

(b) By January 1 of each year an annual report shall be submitted pursuant to section 107(a) of the Act. The report may be in a format of the State's choice.

(Information collection requirements contained in paragraph (a) under control number 0348-0039 and paragraph (b) under control number 0980-0172 are approved by the Office of Management and Budget)

[52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

Reg. 1386.33. Protection of employee's interests.

(a) Based on section 122(b)(7)(B) of the Act (42 U.S.C. 6022(b)(7)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

(Approved by the Office of Management and Budget under control number 0980-0162)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

Reg. 1386.34 [Reserved]

Reg. 1386.35 Allowable and non-allowable costs for basic State grants.

(a) Under this subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel, and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Cost incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to persons with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

Reg. 1386.36 Final disapproval of the State plan amendments or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR Part 1386, Subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

Subpart D—Practice And Procedure For Hearings Pertaining To States' Conformity And Compliance With Developmental Disabilities Plans, Reports, and Federal Requirements

GENERAL

Reg. 1386.80 Definitions.

For purposes of this subpart:

"Assistant Secretary" means the Assistant Secretary for Human Development Services (HDS) or a presiding official.

ADD means Administration on Developmental Disabilities, Office of Human Development Services.

Presiding officer means anyone by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

Reg. 1386.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

Reg. 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

Reg. 1386.83 Use of gender and number.

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

Reg. 1386.84 Suspension of rules.

Upon notice to all parties, the Assistant Secretary may modify or waive any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

Reg. 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

Reg. 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the Federal Register.

Reg. 1386.91 Time of hearing.

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

Reg. 1386.92 Place.

The hearing must be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

Reg. 1386.93 Issues at hearing.

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the Federal Register. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary must terminate the hearing.

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary must provide all parties other than the Department and the State (see Reg. 1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in Reg. 1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

Reg. 1386.94 Request to participate in hearing.

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the HDS Hearing Clerk within 15 days after notice of the hearing has been published in the Federal Register, and must serve a copy on each party of record at that time in accordance with Reg. 1386.85(b). The petition must concisely state: (i) Petitioner's interest in the proceeding,

(ii) Who will appear for petitioner,

(iii) The issues petitioner wishes to address and

(iv) Whether petition intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer must promptly determine whether each petitioner had the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of the petitioners to represent all of them. The presiding officer must give each petitioner written notice of the decision on its petition. If any petition is denied, the presiding officer must briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the HDS Hearing Clerk before the commencement of the hearing. The petition must concisely state: (i) The petitioner's interest in the hearing,

(ii) Who will represent the petitioner, and

(iii) The issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

HEARING PROCEDURES

Reg. 1386.100 Who presides.

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

Reg. 1386.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her,

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person designated by the Assistant Secretary, examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the Subpart or 5 U.S.C. 551-559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person designated by the Assistant Secretary, examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

Reg. 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer,

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

Reg. 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to Reg. 1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

Reg. 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

Reg. 1386.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advance on either side of the issues.

Reg. 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

Reg. 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

Reg. 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

Reg. 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

Reg. 1386.110 Posthearing briefs.

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed findings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

Reg. 1386.111 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under sections 122, 127 and 142 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotments will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 135 of the Act that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she must also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion, Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 138 of the Act. The Assistant Secretary's decision must be promptly served on all parties and amici.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 1987]

Reg. 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 135 of the Act, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision must specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to sections 113, 133 if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, must specify the effective date for the withholding of Federal funds.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to Reg. 1386.84.

SPECIAL PROJECTS— PROJECTS OF NATIONAL SIGNIFICANCE

(45 Code of Federal Regulations Part 1387)

Reg.

1387.1 General requirements

Reg. 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disturbed to comply with section 162 of the Act.

(b) Based on section 162(c), proposed priorities for grants and contracts will be published in the **Federal Register** and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application, submittal procedures, eligible applicants and final priority areas will be published in program announcements in the **Federal Register**.

(d) Projects of national significance must be exemplary models and have potential for replication or otherwise meet the goals of part E of the Act.

(Authority: 42 U.S.C. 6000 et seq.)
[49 FR 11784, Mar. 27, 1984; 54 FR 47985, Nov. 20, 1989]

THE UNIVERSITY AFFILIATED PROGRAM
(45 Code of Federal Regulations Part 1388)

Reg.

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(Authority: 42 U.S.C. 6000 et seq.)
[Source: 52 FR 44847, Nov. 20, 1987, unless otherwise noted.]

Reg. 1388.1 Definitions.

For purposes of this part:

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Programs operation. The program criteria will be used for qualitative evaluation, and also include measurements of program outcome.

Qualitative criteria means desired component and attributes which are UAP program requirements for prescribed areas.

Measurements of program outcome means a specific number of outcomes in a prescribed area. Measurements of program outcome can be aggregated and reported across all UAPs or used as management and evaluation tools in individual programs.

[54 FR 47985, Nov. 20, 1989]

Reg. 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated (UAP) Program. Compliance with the program criteria is a prerequisite for the minimum funding level of a UAP. However, compliance with the program criteria, does not, by itself, constitute an assurance of funding.

[54 FR 47985, Nov. 20, 1989]

Reg. 1388.3 Program criteria—administration.

(a) *Governance*. A UAP must be an integral component of a university but maintain the autonomy required to carry out the UAP mission and provide for the mandated activities as set forth in section 102(13) and section 151 of the Act (exemplary services, interdisciplinary training, technical assistance and information dissemination). The UAP must use management practices that provide direction to professionals, and parents of persons with developmental disabilities, paraprofessionals and volunteers for the UAP. The UAP must also promote the visibility of the UAP, and the integration of the program components. Management practices must facilitate cooperative relationships both within and outside the university community that further the UAP mission, aid persons with developmental disabilities and improve the field of developmental disabilities.

(b) *University relationship*. (1) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university. The written agreement or charter will be required on a one-time only basis and would remain in effect unless changes occur which affect the relationship of the UAP and the university.

(2) The UAP must be responsible to and report directly to a university administrator who will represent the interests of the UAP within the university. The administrator must support and represent the UAP in operation and planning and in the training of university students, professionals, parents and the community.

(3) The UAP must show evidence that it contributes to the university's mission in the form of public relations, university instruction, continuing education, and joint development of new programs and grants.

(c) *Administration*. (1) The UAP must be managed by a person who has adequate background in a discipline relevant to the goals of the UAP, evidence of commitment to the field of developmental disabilities, and functional competence to carry-out the mission of the UAP.

(2) Directors, administrators, and middle managers of the UAP must work with a variety of professionals and nonprofessionals within the university and across levels of the service system to carry-out the UAP mission.

(3) A UAP must maintain a mechanism to identify and successfully complete for funding opportunities other than those under the Act.

(d) *Organization*. (1) A UAP must be represented and fully participate in all meetings and activities of the State Planning Council that are prescribed by the Act.

(2) A UAP's mission must reflect legislative requirements, special needs of persons of various ages with developmental disabilities and the needs of those who work in the field and who are concerned about persons with developmental disabilities.

(3) A UAP must develop a plan which includes the goals, objectives and timeliness for UAP services, special projects, training, technical assistance, information dissemination and research activities that includes a continuous, ongoing assessment of its program and activities.

(e) *Funding*. A UAP must maintain an annual operational budget and use accepted accounting procedures to administer funds.

(f) *Cooperative relationships*. (1) A UAP must maintain cooperative relationships with the State Department Disability Council and the Protection and Advocacy system.

(2) A UAP must maintain cooperative relationships with the UAP network and individuals, organizations, and universities to enhance quality of life for persons with developmental disabilities and to improve the field of developmental disabilities.

(g) *Personnel policies*. (1) In order to promote the interdisciplinary nature of the UAP mission, a UAP must have on staff, or have available, adjunct professors, consultants, or experts in a broad range of disciplines, including education, health, psychology and social work.

(2) A UAP must inform staff of and implement university policies.

(3) A UAP must supplement university policies that enhance professional growth and support research.

(4) A UAP must take affirmative action to employ and advance in employment qualified individuals with developmental disabilities.

(h) *Physical facility*. (1) A UAP must be fully accessible to the handicapped in accordance with section 504 of the Rehabilitation Act.

(2) A UAP must have adequate space to carry out the mandated activities.

(3) Space that was constructed with Federal funds must be used for its intended UAP purpose pursuant to 45 CFR 1385.5 and 1385.7.

(i) *Measurements of program outcome*. Measures of program outcome include:

(1) Number of UAP staff that operate the center identified by name, discipline, percentage of time working on UAP grant, and percentage of time working on other activities within the university.

(2) Amount of university financial and other resources that supplement the UAP.

(3) Total amount of UAP funds which include the amount of the ADD grant and funds from all other sources.

[54 FR 47985, Nov. 20, 1989]

Reg. 1388.4 Program criteria—services.

(a) *Exemplary Services*. A UAP must integrate exemplary services and projects into community settings. Exemplary services are based on emerging or continuing needs and new, innovative concepts or practices. These services may be provided in a service delivery site or training setting within the community, including the university. Exemplary service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Exemplary services must be extended, as appropriate, to include adult and elderly persons with developmental disabilities and also to support the independence, productivity, community integration and human rights of developmentally disabled individuals.

(b) *Community-integrated services*. The following are criteria for evaluating community-integrated services:

(1) Services and projects are scheduled at times and in places that re consistent with routine activities within the local community.

(2) Services or projects interact with and involve community members, agencies, and organizations.

(c) *Bases for services or project development*. The bases for the services or project development must be:

(1) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(2) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(d) *State-of-the-art and innovative practices*. (1) Service and project concepts and practices must facilitate and demonstrate independence for the individual, community integration, productivity and human rights.

(2) Practices that are economical, accepted by various disciplines, and highly beneficial to persons who are developmentally disabled, must be integrated within services and projects.

(3) The design of innovative cost-effective concepts and practices must be evaluated according to accepted practices of scientific evaluation.

(4) Research methods must be used to test hypotheses, validate procedures, and field test products.

(5) Exemplary service and project practices and models must be evaluated packaged for replication and disseminated through the information dissemination component.

(e) *Demonstration and training*. (1) UAPs must disseminate information (brochures and professional articles) to State Developmental Disabilities Councils, the State Administering Agencies, the State Protection and Advocacy Agencies, other public and private agencies serving persons with developmental disabilities and private citizens. This information must describe exemplary services and projects and be made available for demonstration and training.

(2) A variety of individuals must be trained within exemplary services and projects. They include long-term and intermediate interdisciplinary trainees and inservice trainees. The latter group could include service providers, families, and administrators.

(f) *Measurements of program outcome*. Measures of program outcome include:

(1) The total number of clients served by category of service; and

(2) The amount of related research evaluation and dissemination conducted.

[54 FR 47985, Nov. 20, 1989]

Reg. 1388.5 Program criteria—training.

(a) *Organization.* (1) To ensure quality comprehensive interdisciplinary training, professional staff representing the major disciplines of education, health, psychology and, social work, and holding appropriate university appointments, must direct the interdisciplinary training program.

(2) The focus of training must be interdisciplinary service and treatment of persons of various ages with developmental disabilities and their families.

(3) Training must be integrated with exemplary services provided by or affiliated with the UAP.

(b) *Outcome of interdisciplinary training.* (1) Training must develop competencies related to developmental characteristics and assessment of persons with developmental disabilities of various ages.

(2) Training must develop an understanding of various disciplines' roles, diagnostic and evaluation practices, and treatment procedures.

(3) Training must promote understanding and use of the values, knowledge, methods, and skills of the major professions of education, health, psychology and social work and other appropriate disciplines.

(4) Training must include training and practicum in the interdisciplinary team process.

(5) Training must address services and treatment for various groups.

(6) Optional training must address program evaluation and research methods applicable to developmental disability programs.

(7) Optional training must address leadership development issues such as policy analysis and management.

(c) *Long-term interdisciplinary training.* (1) To develop leaders in serving individuals with developmental disabilities, a UAP must recruit students of high achievement from major disciplines into a program that provides long-term training (300 or more hours) in a one-year reporting period.

(2) Each long-term trainee must have planned didactic instruction and clinical practical experiences to be undertaken in a one-year reporting period, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Training activities must cover at least two of the following settings: natural home, supervised living arrangements, residential treatment centers, nonresidential treatment settings, educational and employment settings.

(5) Training activities must cover a range of disabilities and impairments.

(6) Trainees must receive credit, as appropriate, for training completed at the UAP that is performed as part of a program of course work administered by the university or any of its divisions.

(7) Training activities must include:

(i) Instruction in the interdisciplinary team process,

(ii) Experiences as a team member, and

(iii) Experiences as a team leader.

(d) *Intermediate interdisciplinary training.* (1) Students who receive intermediate interdisciplinary training (160 to 299 hours) must be recruited from various disciplines to provide services to persons with developmental disabilities as a part of generic or special services.

(2) Each trainee must have planned instruction and practical experiences, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: Prevention and detection, individual program planning and case management, developmental services, and individuals and family support services.

(4) Trainees must receive credit, as appropriate, for training completed at the UAP performed, as part of a program of course work administered by university or any of its divisions.

(e) *Short-term special purpose interdisciplinary training.* A variety of training experiences designed to improve or expand services to persons with developmental disabilities and their families, including workshops, courses, lectures, and other didactic experiences, must be provided to a variety of individuals who may or do service individuals of various ages with developmental disabilities.

(f) *Training provided by the UAP shall be relevant to community needs.* (1) A UAP must determine and set priorities for training based on the needs of the community.

(2) Training priorities must be established in cooperation with State Developmental Disabilities councils. State manpower councils, the State Mental Retardation/Developmental Disability Agency and other relevant local, State and Federal agencies.

(3) Training priorities must consider national manpower needs, with particular attention to the following areas:

(i) Early intervention programs;

(ii) Programs for elderly persons with developmental disabilities; and

(iii) Community based programs.

(g) *The interdisciplinary training program must be evaluated to improve it.* (1) Student achievement of program goals must be evaluated.

(2) The degree to which the program is achieving its stated goals must be evaluated.

(3) Evaluation must be conducted to develop and assess effective interdisciplinary strategies and procedures.

(4) The extent to which training is satisfactorily addressing the needs of the community must be systematically evaluated.

(h) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of long-term interdisciplinary trainees; number of intermediate interdisciplinary trainees; and number of special trainees completing training.

(2) Number of workshops or training sessions provided; and

(3) Number and type of disciplines of participants involved in each category of training.

[54 FR 47985, Nov. 20, 1989]

Reg. 1388.6 Program criteria—technical assistance.

(a) *Technical assistance.* A UAP must provide technical assistance to individuals and organizations responsible for the independence, productivity, community, integration, and human rights of individuals with developmental disabilities. Technical assistance must be based on state-of-the-art practices and new, innovative practices and models found within exemplary services. Technical assistance must also be based on special needs or emerging problems that are identified by the UAP, organizations or individuals concerned with persons with developmental disabilities.

(b) *Established and planned technical assistance.* (1) Technical assistance must be an integral part of a UAP.

(2) Adequate resources and personnel must be assigned.

(3) Personnel assigned must be specified and be either UAP staff who solely develop technical assistance products and provide technical assistance; or a roster of experts that could be used through consultation.

(4) The UAP must identify potential target audiences and needs.

(5) The UAP must have a system (electronic mail, mailing list) to inform target audiences about technical assistance availability.

(6) The UAP must evaluate and improve technical assistance on an ongoing basis.

(c) *Technical assistance training.* (1) Technical assistance activities must be used as a training opportunity for UAP trainees.

(2) The experience, observations, and testing of the technical assistance provision must be used to refine UAP training.

(d) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of government agencies, service providers and professional organizations to whom the UAP provides technical assistance.SLF

(2) Total hours of technical assistance provided by type (e.g., work-shops, consultation, inservice training) and topic.

(3) Number of trainee hours involved in technical assistance activities.

[54 FR 47985, Nov. 20, 1989]

Reg. 1388.7 Program criteria—information dissemination.

(a) *Information and dissemination.* A UAP must disseminate information products that enhance the quality of life of persons with developmental disabilities. The UAP must disseminate information that is based on exemplary services and projects, interdisciplinary training. UAP products and current developments related to the field of developmental disabilities. Information shall be disseminated to target audiences within the field of developmental disabilities, to persons with developmental disabilities and their families, and to other concerned persons within the general public.

(b) *Information and Dissemination Plan.* (1) An information component or activities must be an integral part of a UAP.

(2) Adequate resources and personnel must be assigne to information dissemination objectives.

(c) *Target audiences for information dissemin* (1) Specific target audiences must be identified for ir tion dissemination. Target audiences may include pers developmental disabilities and their families, service provid administrators, policy-makers, peers, researchers, and the ge eral public.

(2) UAPs must have a system (mailing lists, electronic mail, etc.) to disseminate information to target audiences.

(3) A UAP must use existing systems (the UAP network, professional journals, publishers) to disseminate information.

(d) *Information products.* (1) Information products must be developed and packaged (articles, procedures manuals newsletters) for specific target audiences.

(2) Information products must be based on innovative ideas and practices identified or developed within exemplary services, interdisciplinary training, research, evaluation and technical assistance activities.

(3) Information products must be based on current developments in the field of developmental disabilities and must facilitate independence, productivity and integration into the community for persons of various ages with developmental disabilities.

(e) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of individuals or organizations receiving information about the UAP's exemplary service, demonstrations, training, technical assistance, product and information availability;

(2) Number of individuals or organizations receivin information on current research and new, innovative practices by other individuals and organizations;

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